Oil Regulation

In 28 jurisdictions worldwide

Contributing editor
Bob Palmer

2015

GETTING THE DEAL THROUGH

GETTING THE DEAL THROUGH

Oil Regulation 2015

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Law Business Research

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

First published 2003
Twelfth edition
ISSN 1742-4100

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

CONTENTS

Preface

Oil Regulation 2015

Twelfth edition

Getting the Deal Through is delighted to publish the twelfth edition of *Oil Regulation*, which is available in print, as an e-book, via the GTDT iPad app, and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the 28 jurisdictions featured.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com. This title is also available as an e-book and through the GTDT iPad app.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Bob Palmer of CMS Cameron McKenna LLP, for his continued assistance with this volume.

GETTING THE
DEAL THROUGH

London
June 2015

Angola

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Oil is considered the most important industry in Angola. The majority of Angola's oil reserves are located in offshore blocks, thus, it is estimated that 97 per cent of Angola's crude oil is produced offshore, on high seas at depths greater than 1,200 metres. The offshore concession areas in Angola are divided into blocks, which expand west into the Atlantic Ocean in three distinct bands from A to C:

- shallow-water Blocks 0–13 with a depth of no more than 500m;
- deep-water Blocks 14–30 with a maximum depth of 1,510m; and
- ultra-deep Blocks 31–40 with a maximum depth of 2,515m.

Block 0, located in shallow waters, is the main oil-producing block offshore and still accounts for approximately half of Angola's oil production. Onshore exploration was limited as a result of the civil war (1975–2002) and the most significant blocks are located in the Kwanza Basin, Cabinda and Soyo.

Angola's oil reserves are of approximately 12.6 billion barrels, which is equivalent to 15 to 20 years at present production levels. The actual figure may be significantly higher taking into account the recent oil discoveries in pre-salt areas.

In 1976, the Angolan government created a national oil company called Sociedade Nacional de Combustíveis de Angola (Sonangol). In 1978, Sonangol became the sole concessionaire and majority shareholder for oil exploration and production in Angola and controls all oil industry activities.

The upstream sector leads the oil industry in Angola (exploration and production of crude oil and natural gas) and, at present, the downstream sector (refinery and distribution of the products derived from crude oil) is still considerably underdeveloped.

According to African Economic Outlook, Angola needs to accelerate economic diversification and reduce the dependence on oil, which accounts for about 46 per cent of GDP, 80 per cent of government revenues and 95 per cent of Angola's exports. Oil operations may only be carried out under a prospecting licence or petroleum concession, which means that companies, either national or foreign, in order to be licensed, need to be associated with the national concessionaire, Sonangol, which is the holder of mining rights.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

According to the International Energy Agency, in 2012, the country's total primary energy supply consisted of biofuels and waste (58.7 per cent), oil (34.6 per cent), natural gas (4.3 per cent) and hydroelectricity (2.4 per cent).

The amount of crude oil and gas produced in the country is sufficient to cover consumption needs. On the other hand, the only refinery in Angola, located in Luanda, does not have enough production to cover the need for oil refined products (such as petrol and diesel), therefore, during 2011 Angola imported approximately 3.167 million tonnes of oil equivalent (ktoe) on a net calorific value basis.

The internal consumption of oil products in Angola has a tendency to continue increasing due to the development of the country.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Due to the development of the oil sector in Angola, the government has established an overarching policy regarding oil-related activities, approving specific legislation applicable to that sector. This multidisciplinary regime consists of several key pieces of legislation, covering, inter alia, taxation, exchange laws, environmental and labour issues.

The level of awareness of the Angolan government within the petroleum sector has triggered the approval of detailed legislation that attempts to keep up with the best practices of the international oil industry.

4 Is there an official, publicly available register for licences and licensees?

The government regulatory and supervisory body responsible for regulating oil activities is the Ministry of Petroleum (the MinPet). Prospection licences are issued by the MinPet through executive decrees. The Law on Oil and Gas Activities requires that the MinPet gives the necessary publicity to the prospection licences that it issues, as well as to the respective contents. Normally, this occurs with the publication of the respective Executive Decree in the Official Gazette. Further, petroleum concessions are granted by the government through concession decrees, which must also be published in the Official Gazette. These are the mechanisms used to ensure that those rights are officially made public. The Official Gazette is published by the national press on a daily basis and may be acquired by any interested party, through the payment of a symbolic amount. We note, however, that the Official Gazette is not yet totally available by electronic means.

5 Describe the general legal system in your country.

The Angolan legal system is inspired by Romano-Germanic law and its legislation is largely codified. The courts are legally independent from political power and are hierarchically structured with the Supreme Court as the highest court within the legal jurisdiction.

Generally speaking, contractual and property rights are enforceable by the normal mechanisms, namely, litigation in the courts of Angola or arbitration by agreement between the parties to the dispute.

It is worth mentioning that Angola is not a party to the 1958 New York Convention. Where enforcement is sought in a state that is not party to the New York Convention, it is important to determine whether there is a bilateral treaty (BIT) or multilateral convention for the recognition and enforcement of judgments and arbitral awards to which the two states are party regarding investment arbitration. Before recognition, in other words, before registration and enforcement of a foreign judgment is permitted, the Angolan courts may review the case and judgment on their merits (under certain circumstances provided in the Civil Procedural Code), which normally is a lengthy procedure.

The Law against Money Laundering and Financing of Terrorism obliges the Angolan banking institutions to take measures if they believe that a transaction to which a payment is related lacks economic substance, or can be related to criminal activity (including tax crimes). In May 2014 a new Law on the Criminalisation of Offences Underlying Money Laundering entered into force. This Law widened the range of types of conduct that are expressly regarded as crimes and punished accordingly and introduces certain amendments to the description of types of conduct that are already regarded as crimes under Angolan law, with a view to ensuring conformity with international procedures in respect of money laundering. According to this Law, for certain types of crimes (such as fraud or criminal association) only individuals can hold criminal responsibility, except under special circumstances – for instance, legal entities can be considered responsible when the crime is exercised on their behalf and by people who assume leadership functions.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The legal framework of the oil sector consists of two central laws – Law No. 10/04 of 12 November 2004 (Oil Activities Law), which governs and defines the prospection, search, assessment, development, concession and decommissioning activities of the oil sector and Law No. 13/04 of 24 December 2004 (Taxation of Oil Activities Law), which provides for the taxation of oil and gas activities defining costs, deductions, tax charges and taxable income. Further, Decree No. 1/09 of 27 January 2009 (Oil Activities Regulation), specifically regulates, defines and provides for the requirements and provisions of the Oil Activities Law.

Law No. 2/12 of 13 January 2012 (Law on the Exchange Regime Applicable to the Oil Sector), provides for the exchange regime for the payment of goods, services and capital, arising from the activities of prospection, research, assessment, development and production of crude oil and natural gas. The BNA Order No. 7/14 of 8 October 2014 recently enacted by the BNA, sets the procedures to be adopted in respect of the sale of foreign currency by Sonangol and by the other oil and gas companies (either national or foreign) to the BNA and to the commercial banks, as applicable, for the purposes of the payment of taxes and duties to the state and payments to (entities regarded as) residents (for exchange purposes). Further, it includes transitional provisions about tripartite contracts in respect of the purchase and sale of foreign currency, executed between the operators, the commercial banks and providers of services.

In relation to the supply of services to companies in the oil and gas sector, it is important to take into account:
- the Oil Activities Law;
- the General Governing Framework for the Procurement of Services and Goods to National Companies, by Companies in the Oil and Gas Sector (Ministry of Petroleum/MinPet Dispatch No. 127/03 of 25 November 2003);
- the Regime Applicable to Public Tenders within the Oil and Gas Sector (Decree No. 48/06 of 1 September 2006); and
- Presidential Decree No. 297/10 of 2 December 2010, which provides for the rules and procedures of the limited public tenders for the acquisition of the capacity of associated to the National Concessionaire.

The rules and procedures for access and performing transportation and storage activities of crude oil and natural gas, which arise from the oil activities provided for within the Oil Activities Law, are determined by Law No. 26/12 of 22 August 2012 (Law on the Transportation and Storage of Crude Oil and Natural Gas). In 2014, there was also published a Regulation on the Project, Construction, Exploitation and Maintenance of Petroleum Products Storage Facilities, excluding liquefied petroleum gas (Executive Decree No. 296/14 of 2 October 2014), which defines the respective technical and safety conditions and determines the classification of the petroleum products based upon the dangers they can involve in respect of risk of fire and risk of explosion.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

The Oil Activities Law provides for several causes for extinction of a prospection licence, including (inter alia):
- termination upon the initiative of the Ministry of Petroleum (after prior consultation with the national concessionaire), if the licensee does not comply with its legal obligations or with the ones stated within the licence; or in cases of force majeure that make it impossible for the licensee to fully comply with the obligations undertaken; or
- expiry if:
  - the period set within the licence has elapsed;
  - the licensee is dissolved or extinguished; or
  - a termination condition occurs that is provided within the licence.

In respect of oil concessions, the Oil Activities Law also provides for several situations that can lead to the extinction of the concession, including (inter alia):
- termination upon the initiative of the government, following a proposal by the Ministry of Petroleum that must be duly justified, based upon the following grounds:
  - unjustified non-execution of oil operations under the terms set in the approved plans and projects;
  - the decommissioning of any oil reservoir without the previous authorisation of the Ministry of Petroleum;
  - serious and repeated infringement in the execution of the oil operations, of the Oil Activities Law, the Decree of Concession or other laws that are in force; or
  - extraction or the intentional production of any mineral that is not covered by the object of the concession, except when such extraction or production is unavoidable as a result of the operations undertaken in accordance with the usual practice in the oil industry;
- return (resgate) of the concession by determination of the state based upon public interest reasons, against the payment of a fair compensation under the general terms of the law, to be agreed between the state and the national concessionaire and other oil companies where there is an association (this power can be exercised by the government and can only occur following a proposal by the Ministry of Petroleum); or
- expiry if:
  - the term of the research period (or its extensions) has elapsed;
  - the term of the production period (or its extensions) has elapsed;
  - the national concessionaire is dissolved or extinguished; or
  - a termination condition occurs that is provided within the Decree of Concession.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The government regulatory and oversight body responsible for regulating oil activities is the MinPet. The key powers attributed to this Ministry, as the ancillary body of the President of the Republic, are the formulation, conduction, execution, supervision and control of the executive policy regarding the oil sector, namely, concerning hydrocarbons research, production, refinement, crude oil marketing, storage, transportation and distribution of oil derivatives.

The national concessionaire is Sonangol, EP, which is the holder of the mining rights and has competence to conduct, execute and ensure the oil operations in Angola. Although Sonangol has no legislative powers in what concerns oil activities, it cannot be said that it has no connection with the regulatory and oversight body (the government and the MinPet), especially if it is taken into account that the mining rights granted to Sonangol are, by law, conceded to it by the government and that even the review of a request for a prospection licence by the MinPet must be preceded by an opinion from Sonangol.

9 What government body maintains oil production, export and import statistics?

The MinPet has powers to maintain oil production and is also competent to monitor and control the activity of import and export of crude oil, fuel and lubricants (the responsible body for these matters within this Ministry is the National Directorate of Trading). In January 2007, Angola officially became the 12th member of the Organization of the Petroleum Exporting Countries (OPEC), thus, it is also subject to the crude oil production limitations set by this organisation (the National Directorate of Petroleum has competence in this regard).

Oil export and import statistics are issued by the Studies, Planning and Statistics Department, a department of the MinPet, which coordinates statistics in accordance with the National Statistic System.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

In accordance with article 16 of the Angolan Constitution, all solid, liquid or gaseous natural resources existing on the soil, subsoil, territorial sea, economic zone and continental shelf under Angolan jurisdiction are property of the Angolan state, which determines the conditions for the concession and exploration of those natural resources. The Oil Activities Law in Angola also establishes that all oil resources found on the surface and underwater on national territory, interior waters, territorial sea, exclusive economic zone and continental shelf are part of the Angolan state's public domain.

Additionally Sonangol is the holder of all rights in respect of the oil and gas operations, which cannot be alienated or transmitted. This means that any oil discovered in private or public land, on the surface or subsurface or at sea, shall be deemed property of the Angolan state.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Oil exploration and production in Angola is essentially undertaken offshore. All offshore blocks are located within the exclusive economic zone of Angola (which extends to a distance of 200 nautical miles from the nearest point of the baseline), thus within Angolan jurisdiction.

Pursuant to the Oil Activities Law, the relevant area for exploration and production shall be defined in the prospecting licence. Further, the definition of the concession areas is not subject to any predetermined limits and is authorised by the MinPet in the terms requested by Sonangol. The available areas, within the limits of the national territory, on land or at sea, are divided into specific blocks limited by geographic coordinates. The areas defined by the Ministry shall be published in the Concession Decree and the production sharing agreement (PSA) must mention this Decree and reflect the area and deadlines defined therein.

This means that, since there are no pre-defined areas in the law that are off-limits to oil exploration and production, the areas to be defined in the prospecting licence and in the concession are decided by the MinPet, which shall analyse, on a case-by-case basis, if the licensed area conflicts with any environmental, military, agricultural, fishing or other commercial purposes.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The government body that regulates oil exploration and production in Angola is the MinPet. According to article 6 of the Oil Activities Law, oil operations may only be carried out under a prospecting licence or petroleum concession, which means that companies, national or foreign, in order to be licensed, need to be associated with Sonangol. Further, the concession shall be executed through a commercial company, a joint venture (JV) or a PSA – the last being the most common type of agreement in Angola and applicable to onshore or offshore operations between the company to be licensed (associate) and Sonangol.

The request for a prospection licence must be submitted to the MinPet with evidence of the trustworthiness and technical and financial capacity of the applicant. The request must also refer to the objectives to be achieved, the envisaged area, the technical and financial means and the provisional budget to be used and other elements that the applicant considers relevant. The application is subject to the payment of a fee that is determined by MinPet, according to article 37 of the Oil Activities Law and must be reviewed by the MinPet (after obtaining an opinion from Sonangol), which may request clarifications from the applicant. There is no time frame for a licence application. Once the authorisation order is delivered by the Ministry, the MinPet issues the prospection licence.

Concerning the concession regime, the submission of proposals has to be in accordance with the procedures that are established every time MinPet opens a new public tender (which is the general rule, although direct negotiation is also possible). Therefore, the time frame is published in the Official Gazette, in a newspaper and on Sonangol's website. The law provides no fees for the submission of proposals.

Where Sonangol intends to associate itself with third parties for the purpose of undertaking oil operations within a certain area, it must request to the MinPet authorisation to launch a public tender and the authorisation request must be submitted together with the suggested reference terms. Under certain exceptional circumstances provided by law, Sonangol may be entitled to negotiate directly with interested companies. The potential associates must also provide evidence of their trustworthiness and technical and financial capacity. Under certain circumstances, the public tenders for certain types of oil exploitations may be limited, essentially in order to promote the diversification of foreign investment in areas with lower risk and lower level of investment; and to improve the participation of Angolan companies in the sector.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The Law on Oil and Gas Activities provides for the principle of exclusivity of the national concessionaire; that is, Sonangol is the holder of the rights pertaining to oil and gas operations. In this context, Sonangol can either undertake the oil operations on its own, or in association with third parties. Where the association is formed through a commercial company or through a joint venture, Sonangol shall hold, by rule, more than 50 per cent of the association's shareholdings. Under justified grounds, the government may authorise that Sonangol holds 50 per cent or less of the association shareholding.

According to article 18 of the Oil Activities Law, the entities that are associated with the national concessionaire have no right to compensation or to recover the invested capital where there is no economically viable discovery within the area that is determined in the licence. This means that the risk involved in the utilisation of the invested capital during the research period must be assumed by these entities. Normally, under the terms of the PSA, the first percentage (this is regarded as a biddable item under the model PSA for Angola) goes to contractors to repay its exploration, development and operating costs, that is, the petroleum costs are recoverable out of a specified percentage of production.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

The only tax deemed a 'royalty' in Angola is production tax, which consists of a percentage share on the sale of crude oil, although oil produced under a PSA is exempt of the mentioned tax. Royalties are due on the amount of crude oil produced on each concession or contracted area, minus the quantities used on oil operations, if duly approved by Sonangol.

The agreement of Sonangol with Cabinda Gulf Oil Company, a subsidiary of Chevron Texaco, in Cabinda (Block 0) is the only offshore block subject to the concession model, thus liable to pay production tax. Notwithstanding this, Block 0 is the most productive oil block in Angola.

The production tax on oil production is 20 per cent, for offshore and onshore production and shall be paid to the Ministry of Finance (according to article 14 of Law No. 13/04 of 24 December 2004). This percentage can be reduced to 10 per cent, in the following cases:

- oil exploration in small blocks;
- oil exploration in offshore areas with depths superior to 750 metres; and
- oil exploration in land areas of difficult access previously defined by the government.

The government is the entity responsible for granting the reduction of the mentioned percentage, upon the national concessionaire's request.

Decree No. 1/09 provides, in article 14, that the agreement to be entered into between the national concessionaire and its associates must contain, among other elements, the offered financial counterparts (bonuses).

15 What is the customary duration of oil leases, concessions or licences?

The duration of an oil concession has two distinct periods: the research or prospection period and the production period, although a concession may be limited to the production period.

The duration of an oil prospecting licence and of a concession is defined in the relevant licence or Concession Decree, which means that the grant of such a licence or concession by the MinPet shall depend upon each particular case.

The Oil Activities Law provides that the maximum duration of a prospection licence is three years, however, the MinPet may grant the licence for a longer period in the event it requests supplementary works (including interpretation of data). Further, the prospection licence can be exceptionally extended, provided that the respective request is submitted to the MinPet within a minimum period of six months.

Concessions are normally granted for a period of approximately 25 years. The term of a concession may also be exceptionally extended upon request. This extension shall be granted by the Ministry of Petroleum after verifying that existing obligations were complied with by the national concessionaire. In 2004 the concession of Block 0 in Cabinda, which has been operating since the late 1960s, was extended for 20 years, ending in 2030.

16 For offshore production, how far seaward does the regulatory regime extend?

Pursuant to the Oil Activities Law, oil operations may be executed on the surface and underwater on national territory, which shall include interior waters, territorial sea, the exclusive economic zone and continental shelf (Law No. 14/10 of 14 July 2010 – the Law on Maritime Spaces).

Additionally, Angola is a party to the United Nations Convention on the Law of the Sea (UNCLOS), which defines the rights and responsibilities of nations concerning their use of the world's oceans, establishing guidelines for businesses, the environment and the management of marine natural resources. Concerning the jurisdiction of marine areas, article 60 of UNCLOS establishes that coastal states like Angola shall have exclusive jurisdiction (including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations) and are entitled to, in their exclusive economic zone, construct and to authorise the construction, operation and use of artificial islands, installations and structures for the purpose of exercising their right to explore and exploit the resources of the continental shelf.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

According to Angolan legislation there is no distinction between the onshore and offshore regimes and the regimes governing rights to explore for or produce different hydrocarbons. The scope of the Oil Activities Law covers oil operations, whether on land or at sea, and the definition of 'oil' and 'crude oil' of this Law includes oil, natural gas and other hydrocarbon substances that can be found and produced in an oil block.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Any company, national or foreign, with proven capability, expertise and financial capacity may file a request with the Minister of Petroleum to be granted a prospection licence in order to assess the oil potential of a given area.

If an entity intends to explore a certain block and to be granted a concession it has to be incorporated as a commercial company, foreign or national, and be associated with the national concessionaire, after previous authorisation. The commercial company intending to form the mentioned association has to prove its good reputation and financial capacity in order to execute oil activities in a given concession. If the company is an operator it also has to show proof of its technical capacity.

The designation of the associate shall be effective after a public tender (which as mentioned above can be limited under certain circumstances set by Presidential Decree No. 297/10 of 2 December 2010) or direct negotiation. In accordance with article 4 of Decree No. 48/06 of 1 September 2006, regarding the procedures to be observed in public tenders concerning the oil sector, for a company (that is not an operator) to be associated with Sonangol, it has to provide, inter alia, the following elements (to the national concessionaire):

- its business name;
- its place of incorporation, registration and address of its registered office;
- its main activities;
- reference to reputable banks, which can confirm the company's financial capacity; and
- details of experience regarding oil research and production, including details of reserves and production.

If the company to be associated with Sonangol is the operator of an oil concession it shall, in addition to submitting the referred elements:

- be competent and have experience in the management and execution of oil operations;
- possess technical and operational expertise; and
- have an efficient organisational structure.

The operator can also provide details about its experience in carrying out oil operations, which may be relevant for the assessment of the application, particularly in the areas of safety, environmental protection, prevention of pollution situations, employment, integration and training of Angolan staff.

19 What is the legal regime for joint ventures?

Upstream oil projects usually require the investment of large amounts, therefore, they may be executed as an unincorporated joint venture by several companies operating under the terms of a joint operating agreement (JOA). Its scope normally covers oil exploration and production, plus treatment, storage and transportation. It also establishes the accounting and auditing arrangements and the designation of the operator that usually holds the largest percentage of interests in the joint venture. The operator is normally a well-established oil company with substantial experience and substantial financial and technical resources.

Pursuant to the Oil Activities Law, Sonangol may be associated with a commercial company to execute oil activities, in which case information regarding the type of agreement (in this case, a JOA) entered into shall be mentioned in the Concession Decree and signed 30 days after the publication date of this Decree in the Official Gazette. Any amendment to the JOA shall be subject to approval by the government, through decree.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Sonangol shall immediately inform the MinPet after discovering an oil well on a concession area that has capacity for commercial exploration and that exceeds the limits of that concession area and can only be commercially explored together with an already-existing oil well in an adjacent area to the concession or if it considers that a commercial discovery in the concession must, for economic and technical reasons, be explored together with an already existing commercial discovery in an adjacent area to the mentioned concession, according to article 64 of the Oil Activities Law.

In the case of domestic reservoirs, if two relevant areas are under the same oil concession regime, the MinPet may, by written notice to Sonangol and its associates, determine that the oil discovered shall be jointly explored and produced. Subsequently, Sonangol and its associates shall draft a joint development and production plan for the relevant wells and submit that plan to the MinPet 180 days after receiving the mentioned written notice.

Concerning cross-border reservoirs, the Oil Activities Regulation provides that Sonangol must inform the MinPet, within 30 days from the declaration date of the commercial discovery regarding the existence of an oil deposit that extends beyond the Angolan border or delimitation line of the continental shelves of the country. The MinPet shall initiate negotiations with the governments of the neighbouring countries with jurisdiction over the relevant adjacent areas in conjunction with Sonangol and its associates, with a view to reaching an agreement acceptable to all parties for the development and production of the said oil deposit. This agreement shall be approved by the governments of the countries involved and production cannot begin before that approval.

21 Is there any limit on a party's liability under a licence, contract or concession?

During the research period, the law is clear where it provides that the risk related to the investment is borne by the entities associated with the national concessionaire.

According to the Oil Activities Law, the licensees, the national concessionaire and its associates are obliged to repair damages caused to third parties while performing oil activities, except if they prove that the act has not been intentional. Any approvals and authorisations obtained from governmental services do not exclude this civil liability.

According to Decree No. 39/01 of 22 July 2001, the control of the risk management activities, to which are exposed people, assets and incomes related to the oil activities within the concession areas and their financing, is made by the national concessionaire, whether by insurance or other means. All insurance and reinsurance must be acquired by Sonangol, in accordance with the General Law of the Insurance Activity (Law No. 1/00 of 3 February 2000).

Within the scope of the contracts entered into between the insurance entities and the national concessionaire, the Law requires that all specifications must be reasonable, ensuring the economic and prudent coverage of the risks.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Pursuant to the Law on Oil and Gas Activities, the licensees and the associates of Sonangol shall provide a bank security to guarantee compliance with the work obligations that they have taken on with the issue of the licence (equivalent to 50 per cent of the estimated works amount), or with the contract entered into with Sonangol (equivalent to the amount agreed in respect of the concession mandatory works programme). The amount of the bank security may be reduced progressively while the work obligations are being complied with. The associates of Sonangol shall also provide a corporate guarantee, if this is requested by Sonangol. This guarantee must be provided within 30 days after the issuance of the prospection licence or after the signature of the agreement entered into between Sonangol and its associates.

However, the national concessionaire may require, within 60 days after the signature of the contract (in the case of concession) a corporate guarantee, but it is Sonangol that defines the intended type of corporate guarantee.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

All licensees, the national concessionaire and its associates, as well as all entities cooperating with them on the performance of oil activities must acquire materials, equipment, machinery and consumption goods from national sources, as well as hire national service providers. However, the law allows that, as a condition of these acquisitions and hiring, the costs are not more than 10 per cent when compared to the ones that would derive from identical foreign services and goods, as long as the values include taxes, customs, transportation and insurance costs. For this purpose, national companies must be consulted within the same conditions as foreign companies.

MinPet is the competent authority for the oversight of this obligation and contracts entered into in breach of these rules shall be deemed null.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

There are several local content requirements to be taken into account within the oil and gas sector, especially considering the Oil Activities Law, the General Governing Framework for the Procurement of Services and Goods to National Companies, the Regime Applicable to Public Tenders within the Oil and Gas Sector and the Decree-Law No. 17/09 of 26 June 2009.

As mentioned above, the licensees, Sonangol and its associates, as well as any other entities that cooperate with them in the execution of oil operations, must observe the preference right mentioned in the previous response (see question 23), which is generally set by law in favour of national entities (either state-owned or privately held).

Further, in order to be registered at the MinPet as a provider of services to the oil and gas industry, the companies are required to have the majority of their share capital subscribed and held by nationals.

Generally speaking, local companies are only entitled to hire up to a maximum of 30 per cent foreign employees (in the event that the company's workforce consists of five or more employees). However, in the oil and gas sector, the foreign companies and the national companies whose the majority of share capital is held by foreigners, must fill in their staff or employee chart, in all categories and functions, with nationals (except where it is proven that the local labour market cannot provide for nationals for the necessary positions). The Decree-Law No. 17/09 of 26 June 2009 (which in general provides for the rules and procedures to be followed in the recruitment, integration, training and development of Angolan personnel and the hiring of foreign personnel for the execution of oil operations in Angola and for the activities of oil refining and processing, storage, transport, distribution and marketing of petroleum products) includes that rule and other related requirements that are further developed in question 34 in respect of labour matters.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

The associates of Sonangol may only transfer part or all of its contractual rights to third parties of proven good reputation, technical and financial capacity, after obtaining prior permission from the Minister of Petroleum, who shall publish the relevant approval in an executive decree. The transfer of contractual rights also includes the transfer of shares and participations to third parties representing more than 50 per cent of the share capital of the transferor. If the transfer occurs between affiliates and the transferor remains jointly and severally liable for the obligations of the transferee, no approval is required. The transfer contractual instruments must be submitted to Sonangol for prior approval. Further, Sonangol shall have a pre-emption right when a transfer of contractual rights to third parties occurs, if those rights are not transferred to an affiliate of the transferor.

If Sonangol does not exercise its pre-emption right, it is immediately transmitted to national associates benefiting from the special status of national companies (that were granted specific benefits and rights).

26 Is government consent required for a change of operator?

The change of operator is subject to prior authorisation of the MinPet, upon Sonangol's proposal.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

The Taxation of Oil Activities Law provides that any gains or profits resulting from the assignment of interests are subject to Petroleum Income Tax. In principle, this also applies to changes of control of companies engaged in production and exploration activities.

Further, the transferee or buyer of an interest in an exploration agreement (eg, PSA) shall be required to take on the transferor's or seller's position in respect of cost recovery.

Decommissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

Regarding decommissioning, the Angolan government has approved legislation establishing the requirements to submit to the MinPet a preliminary decommissioning plan by the companies intending to explore and produce oil in Angola together with the general development and production plan and also to submit a final decommissioning plan one year before the term of a concession or before the decommissioning date of that concession. The main laws and regulations applicable to decommissioning are Law No. 10/04 of 12 November 2004 (the Oil Activities Law), Law No. 13/04 of 24 December 2004 (the Taxation of Oil Activities Law) and Decree No. 01/09 of 27 January 2009 (the Oil Operations Regulation).

If the decommissioning plan is not submitted or executed on the approved deadline, the relevant ministry may enforce the necessary measures for the plan to be drafted and executed at the expense of Sonangol and its associates. If any oilfield is abandoned without prior consent of the Minister of Petroleum, the concession authorisation for such may be withdrawn. Additionally, this situation, if considered an infringement, may be subject to a fine, which payment does not exempt the defaulting party to comply with the relevant duties and obligations.

In relation to liability for losses and damage, after having carried out the decommissioning of the relevant wells and related assets, if Sonangol requests such decommissioning and does not place at the disposal of the associate the funds (amounts paid to Sonangol for the decommissioning), or after the associate carries out the handing over of the equipment and wells to the national concessionaire, the associate will have no further liability in relation to the same, except in cases of gross negligence, wilful misconduct or serious fault. Sonangol and its associates shall be liable for damage caused to third parties arising from oil operations, unless they prove there was no wilful conduct. If there are various associates, the liability of such members shall be joint and several.

Finally, it is important to note that, in accordance with information provided by the MinPet, defaults or non-compliance from the associates regarding the implementation of decommissioning procedures have never occurred.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

The Oil Operations Regulation provides that the general development and production plan shall contain a preliminary plan for the decommissioning of facilities, as well as the provision of the funds necessary for the deactivation of the oilfield. Further, production expenses may include a provision for decommissioning costs whose limits are calculated and accounted for in accordance with the rules established in the agreements entered into between Sonangol and the associate (eg, the PSA).

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Due to the fact that oil in Angola is mainly produced offshore and land connections and roads are scarce, the oil is mainly transported in vessels through the Atlantic Ocean. The MinPet is the government body with the responsibility to regulate the transportation of crude oil and crude oil products, by sea, river, air, road or train and also through pipelines. The transportation of crude oil and crude oil products (whether by pipeline, marine vessel or tanker truck) shall be subject to licensing by the MinPet. Across national boundaries the transportation of crude oil and crude oil products must also observe the requirements of the international regulations approved by the International Maritime Organization (the IMO), of which Angola has been a member state since 1977.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

Licences are issued in accordance with the Law on the Transportation and Storage of Crude Oil and Natural Gas.

The National Directorate of Trading of the MinPet is the department within the MinPet responsible for organising, preparing and granting a licence for transporting crude oil and crude oil products. The requirements and technical conditions to be fulfilled by the applicant shall be defined by the president of Angola. The National Directorate of Petroleum and Biofuels may request supplementary information and if the applicant does not comply with this request, the licensing application shall be annulled. The review of the licensing application shall be subject to a fee.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

The execution of oil operations is subject to the submission of several plans with the MinPet for approval, namely an annual work plan, a development and production plan, an annual production plan and an environmental impact evaluation. Accordingly, these plans should include health, safety and environment requirements for oil-related facility operations, pursuant to Decree No. 38/09 of 14 August 2009 (the Safety and Health of Oil Operations Regulation) and Decree No. 39/00 of 10 October 2000 (the Environment Decree).

Concerning environmental requirements, Sonangol and its associates shall draft an environmental impact evaluation identifying the potential environmental damage that may be caused by the project or facilities and the necessary measures to mitigate those effects.

The authorisation for drilling and operating a well shall be subject to the presentation of a plan that shall include safety, technical, protection and management methods, inspection plans and decommissioning plans. The operator must have a maintenance plan to ensure that facilities have safe and acceptable technical conditions. The operator shall implement a plan for the management of simultaneous operations to assess the relevant dangers and risks. Regarding health and safety requirements, among others, the operator must ensure that all staff executing oil operations have the necessary qualifications, knowledge and training, implement a risk and health evaluation in accordance with national and international standards, shall certify that normal work conditions provide protection for the health and safety of employees, ensuring protection against noise, vibration, radiation and chemical products and medical assistance to employees. The operator must ensure that all facilities provide protection equipment for each employee. Before starting execution works in a facility, the operator shall establish a safety control and management programme, the results of which should be documented. The operator must also implement a documented system for the safety, health and hygiene management and shall have an updated registry regarding achieved safety procedures, staff training, audit inspections and results.

The inspection regarding the compliance with these obligations and requirements shall be executed by the MinPet, and non-compliance shall be punished by way of a fine (eg, between US$5,000 and US$500,000, due to lack of compliance with environmental requirements) and penalties, which can be to directly repair the damage at the cost of the entity responsible for that damage, the temporary suspension of operations, or even compensation to employees.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

In Angola, oil and oil products are subject to composition requirements pursuant to Executive Decree No. 288/14 of 25 September 2014, which establishes the authorised composition for oil derivatives, namely, fuel and diesel, in order to comply with health, safety and environmental requirements.

The execution of refinement, transformation, treatment and storage activities concerning oil and oil products shall be subject to licensing, by the MinPet, of the relevant facilities taking into account the good reputation, economic and financial capacity of the applicant, the conformity of the project with the national energy policy and environmental policy objectives.

The MinPet is responsible for inspecting and controlling compliance with oil and oil product composition requirements, namely, to gather information and reports regarding the specifications of those products. Non-compliance with these requirements shall result in the application of a fine by the Ministry.

Update and trends

As noted above, the oil sector accounts for approximately 80 per cent of government revenue. Therefore, the recent oil crisis gave rise to a public budget gap, and the government had to adjust public expenditure and investment accordingly. In any event, Angola is expected to take this situation as an opportunity to diversify its economy.

One of the major future trends continues to be related to the discovery of oil in pre-salt areas, given that it can increase the Angolan upstream and downstream oil activities.

Taking into account that the country has only one refinery in Luanda and does not have enough crude oil processing capacity to cover internal consumption, the Angolan government has made plans for a new refinery, SonaRef, in the coastal city of Lobito. The works on the infrastructure support and the preparation of the field for the construction of the refinery are at an advanced stage of development. The refinery will aim to process approximately 200,000 barrels per day of heavy oil.

Last year, Sonangol announced that it planned to auction 12 offshore oil blocks during 2015. Seven of the new blocks open to bids in 2015 are located in the Namibe Basin and five in the Lower Congo. Sonangol is currently auctioning off 10 other new blocks in the onshore basins of the Congo and Kwanza rivers which may represent more than half of the known reserves of Angola.

In respect of the implementation of the strategy for liberalisation of the fuels market, there were several activities up to the end of last year, including the issuance of 1968 import authorisations and the licensing of 178 new distribution companies and 40 petrol stations.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Under Angolan law, all foreign companies that operate in the oil and gas sector must undertake that their staff, in every category and function, shall be Angolan citizens (article 4 of Decree-Law No. 17/09 of 26 June 2009). If there are no Angolan citizens with the required expertise and qualification for the occupation (this must be proved through the publication of the relevant job vacancy in a newspaper) the hiring of foreign staff can only be executed after authorisation by the MinPet. No discrimination can be made between national and foreign employees (eg, in terms of salary).

According to legislation recently published, the contracting entity will be required to provide evidence on the publication of announcements referring to the positions to be occupied and with a description of the function to be undertaken, as well as the CVs submitted by potential candidates to these positions.

The legislation defines the rules and procedures to be followed in the recruitment, integration, training and development of Angolan personnel and the hiring of foreign personnel for the execution of oil operations in Angola and for the activities of oil refining and processing, storage, transport, distribution and marketing of petroleum products.

Generally speaking, all companies operating in the oil and gas sector in Angola (core and non-core, ie, it now covers oil and gas service providers, not only operators) must prove the need to contract foreign technical employees under the established procedures.

Companies also have to enter into a programme contract with the MinPet, which shall establish all the obligations related to the development of human resources and that are subject to certain schedules.

Decree-Law No. 17/09 of 26 June 2009 provides that all the foreign companies (and Angolan companies whose majority of the share capital is held by foreign entities or persons) that perform in the national territory activities of prospection, research, development and production of petroleum and those that perform refining and treatment of petroleum, storage, transportation, distribution and commercialisation of petroleum products must allocate, each year, an amount in a currency, internationally convertible, to the constitution of a fund for the training and development of Angolan human resources in the oil sector (to be under the management of the MinPet). The annual contributions are calculated based upon certain criteria that are set by law, such as:

- a company that holds a prospection licence – US$100,000;
- a company during a research period – US$300,000; and
- a company under a production period – 15 US cents per barrel produced during the year.

The fines for the infringement of these rules vary considerably depending upon the type of breach and normally correspond to a certain percentage of the contribution that is due.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The Ministry of Finance together with the MinPet are the responsible authorities in the establishment of tax policies and tax charges. The Petroleum Activities Tax Law establishes the tax regime applicable to oil activities in Angola, including tax charges applicable to oil companies under this regime, namely: oil production tax; oil income tax; oil trading tax; surface tax and the contribution for the training of Angolan staff. In this context, each tax has a different contribution base and incidence.

The oil production tax is levied on the amount of crude oil measured at the exit of the well minus the quantities consumed on site on oil activities. This tax is charged based on the value of output produced by the companies and, normally, the tax rate is 20 per cent but it can be reduced, in some cases, to 10 per cent. This tax is not applicable to oil operations under the PSA and ensures revenue for the government, even if the production is not profitable for the companies. Oil income tax is levied on the profits of each financial year in accordance with accounting policies and is charged based on the net income. Surface tax is levied on the concession area and the surface rate is equivalent, in national currency, to US$300 per km2. Oil trading tax is levied on the taxable income and the tax rate is 70 per cent. Finally, there are additional tax charges, such as the contribution for the training of Angolan staff, which shall be paid by the associates of the national concessionaire.

This special tax regime established under the Petroleum Activities Tax Law is only applicable to entities (whether they are established or not in Angola) carrying out in Angolan Territory oil activities (such as prospection, exploration, production, transportation, sale of oil), as established in the Petroleum Activities Law.

According to Law No. 19/14 (which approved the new Industrial Tax Code), the provision of certain services to Angolan entities by resident or non-resident entities will determine that the entities responsible for the payment of those services shall withhold industrial tax at the rate of 6.5 per cent levied on the services' value:

- residents, including permanent establishments (eg, branches) – on a provisional basis, with the possibility of tax deduction of the amount withheld to the final tax); and
- non-residents – definitive withholding tax (meaning that the tax withheld is their final tax liability in Angola).

According to the new Consumption Tax Regulation (CTR – Presidential Legislative Decree No. 3-A/14 of 21 October), there are three types of operation subject to tax: import, production and provision of services. According to article 10 (1) of CTR the events are subject to tax at a tax rate of 10 per cent (this is the general tax rate, according to the default regime). Note that in Annex III of CTR the provision of certain services (including consultancy services) will be subject to Consumption Tax (CT) at a rate of 5 per cent. In certain situations where the acquirer of the service is an oil and gas operator and where the services being provided are subject to CT, the recipients of the provided services will retain the CT amount, which they must collect, pay and report to the tax office. If the oil companies do not respect these rules they will not be allowed to deduct the CT cost in the computation of Petroleum Income Tax.

However, the CTR also provides that certain services may be exempt from CT. These exemptions may be granted to entities holding an exemption certificate provided by local tax authorities to the services providers (upon request of oil investor companies), whether national or foreign, provided that the oil operations at issue are exclusively exercised in the concession areas in the research or development phase, until the date of the first commercial production.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

The MinPet is the entity with powers to establish the reference price of oil products in coordination with other public entities. Since the distribution and marketing of crude oil and crude oil products is subject to licensing by the MinPet, non-compliance with the price-setting regime may imply the withdrawal of that licence.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Oil Activities Law defines, under general terms, the Ministry of Petroleum as the entity responsible for the supervision of the activities developed by the oil companies in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

The Angolan framework is still trying to implement an effective 'liberalisation' of the oil sector, namely of downstream activities, and the Law No. 28/11 of 11 September 2011 establishes the principle of competition for downstream activities. Although it is possible to file a request for a government determination to confirm whether a certain action would violate any anti-competitive standards, this is not a common practice and it is difficult to indicate an estimated process time for that purpose.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Concerning oil activities, the Angolan government is trying to comply with the best international practices applicable to this specific sector. Since 2007, Angola has been a member of OPEC (through the approval of Resolution No. 95/06 of 13 December 2006), being subject to oil quotas. Further, Angola, as a member of the IMO, has to comply with the provisions of the international regulations approved by the IMO. Generally speaking, the level of awareness of the Angolan government within the petroleum sector has triggered the approval of detailed legislation that attempts to keep up with the best practices of the international oil industry.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

The acquisition of oil-related interests shall always be subject to the prior approval of the Minister of Petroleum, who shall publish the relevant approval in an executive decree. The transfer of those interests shall be subject to a pre-emption right of the national concessionaire. The Oil Activities Law provides a definition of 'foreign associate' as a legal entity that is incorporated in a foreign territory and that becomes associated with the National Concessionaire as a foreign investor. Foreign parties interested in performing petroleum activities in Angola can either incorporate a local subsidiary or simply establish a branch.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Cross-border sales, that is, by means of importation or exportation of crude oil or crude oil products, are subject to licensing and the approval of this licence shall be granted by the MinPet.

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Argentina

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

On 31 December 2013, Argentina had, calculated as at the end of the exploitation concessions, proven oil reserves of 370,374 million cubic metres and probable oil of 132,287 million cubic metres. The key industry players are YPF, Pan American, Petrobras, Chevron, Tecpetrol, Sinopec, Total, Shell, Sipetrol, Pluspetrol, Capsa and Capex.

As from 2013, the federal government switched to more liberal (market) policies, mainly in support of YPF's expansion and revenues. During 2014, YPF increased the prices of fuels in the retail market by about 70 per cent, and natural gas producers obtained an incentive price of US$7.5 per MMBtu. The crude oil price in the domestic market remained around US$70 per barrel (bbl), although oil prices dropped in the international market.

In September 2014, the Federal Congress, as a result of an agreement between the federal government and the 10 provinces that produce hydrocarbons, passed Law No. 27,007 which amended Hydrocarbons Law No. 17,319. A new regime of exploration permits and exploitation concessions considering unconventional activity, a promotional regime for the investment for hydrocarbon exploitation and the regulation on certain relationships between the federal government and the provincial governments can be highlighted as the main aspects of the new Hydrocarbons Law.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

At 31 December 2013, the country's energy needs were covered as follows:

- hydrocarbons, 87.2 per cent (oil, 37.8 per cent; natural gas, 60.4 per cent; mineral coal, 1.8 per cent);
- hydroenergy, 4.4 per cent;
- nuclear fuel, 2.3 per cent; and
- other sources, 6.1 per cent.

Sixty per cent of Argentina's consumed electricity comes from thermal power plants (fed by natural gas and, to a lesser extent, by gas oil and fuel oil), 33 per cent from hydroelectric power plants and 7 per cent from nuclear power plants.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Pursuant to Hydrocarbons Law No. 17,319, article 3, Law No. 26,197 (the Short Law), article 2 and Law No. 26,741 (the Hydrocarbons Sovereignty Law), article 2, the federal executive branch establishes the federal policy applicable to the exploration, exploitation, refining, transportation and marketing of liquid hydrocarbons for domestic supply.

Following the enactment of the Short Law in January 2007, the licensing of exploration and exploitation activities in hydrocarbon reservoirs has been transferred from the federal government to provincial governments.

4 Is there an official, publicly available register for licences and licensees?

Each province has its own registry of licences and licensees and this information is accessible by the public. In the case of offshore areas, subject to federal jurisdiction, this control is under the Argentine Secretariat of Energy. No fees are due to obtain this information. The register is physical, and information is obtained by written request.

5 Describe the general legal system in your country.

The general legal system in the country is civil law and the rule of law is generally upheld. Argentina has resisted the enforcement of numerous ICSID awards against the country on the grounds that the awards should be enforced through Argentine tribunals. However, Argentina has not denounced any of the bilateral investment treaties it has signed.

There are federal and provincial laws against corruption and bribery, the enforcement of which is negligible. Such regulations refer mainly to ethics in public administration. The following laws can be highlighted, among others: Federal Law No. 25,188 on Ethics in Public Administration, Law No. 4,816 of the Province of Chubut on Ethics and Transparency in Public Administration, Law No. 3,550 of the Province of Río Negro on Ethics and Suitability in Public Administration and Law No. 3,034 of the Province of Santa Cruz on Ethics in Public Administration.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The National Hydrocarbons Law, No. 17,319, amended by Laws No. 26,197 and No. 27,007, is the main body of legislation for oil and gas exploration and production. Although of arguable constitutional grounds, the provinces have passed their own laws and regulations on oil and gas.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

Expropriations in Argentina are regulated by the Federal Law on Expropriations, No. 21,499, and there are no specific provisions for oil and gas licences. This law was applied when implementing the expropriation of the majority shareholding by Repsol in YPF in March 2012, which was finally settled in May 2014 by means of an agreement executed between the federal government and Repsol, subsequently ratified by Law No. 26,932 passed by the Federal Congress.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The enforcement authority for the Hydrocarbons Law is the Federal Secretariat of Energy. As a result of the Short Law, each province has its own enforcement authority, typically a secretariat of energy or a hydrocarbons board.

In 2012, the Federal Executive Branch passed Decree No. 1277/12 which created the 'National Plan of Hydrocarbons Investments', to be regulated and monitored by the 'National Commission of Strategic Planning and Coordination'. Such Commission has also powers to regulate domestic hydrocarbon market transactions by fixing costs and prices, to request the companies to provide technical, quantitative or economic information and to take actions to prevent and correct any deviations affecting consumers' interests in relation to price, quality and availability of hydrocarbons and fuels, among other features.

9 What government body maintains oil production, export and import statistics?

The Secretariat of Energy maintains oil production, export and import statistics through Resolution No. 319/1993, which authorises the Secretariat to obtain statistical information from the companies operating such activities.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

Law No. 26,197, which implemented Law No. 24,145, transferred the eminent domain on hydrocarbon reservoirs from the federal government to the provinces. Exploration permits and exploitation concessions existing when the Short Law was enacted have been transferred to the relevant provincial governments until expiration thereof. International or interprovincial transportation concessions will continue to be subject to federal jurisdiction. Reservoirs located in the Argentine Sea, between 12 and 200 nautical miles from the coast, exclusively belong to the federal government. Petroleum rights are independent from surface rights.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Oil and gas exploration and production are almost exclusively conducted onshore. Offshore production is only located in southern Argentina, in the provinces of Santa Cruz and Tierra del Fuego. Until 2014, ENARSA, a state-owned oil company, used to have a monopoly on offshore exploration activities and had been fostering such activities in association with other companies such as Petrobras, ENAP Sipetrol and YPF. In 2014, by means of Law No. 27,007, all offshore areas previously granted to ENARSA, and with respect to which there were no association agreements executed, were relinquished and transferred to the federal state. The existing association contracts executed by ENARSA with private companies are to be reconverted into exploration permits and exploitation concessions.

Oil and gas exploration is not allowed in national parks and natural monuments.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

Upstream business is based on exploration permits and exploitation concessions granted by each provincial government or the federal government with respect to the areas corresponding to the continental shelf. Holders of exploration permits and exploitation concessionaires have exclusive rights on their areas and have only recently shared operating rights with the federal government or state-owned companies, the latter keeping their title to the exploitation concessions or the exploration permits.

Companies acquire rights to exploration permits or exploitation concessions through public bids called by the provinces or the federal government (the latter in the case of areas pertaining to the continental shelf). Further, companies may file private initiatives proposing the development of areas with public authorities.

Companies may also acquire rights by means of farm-in agreements or assignment of rights agreements on existing permits or concessions. Finally, companies may also acquire rights to production without acquiring mineral rights on the permits or concessions. That is the case for several permits and concessions granted in recent years by some provinces to their state-owned companies.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

State-owned companies are entitled to hold exploration permits and exploitation concessions and to operate them. There are no limits as to their participating interest in licences. In the case of the province of Neuquén (where the Vaca Muerta formation is located), all vacant and relinquished areas were reserved in favour of the provincial state-owned company (Gas y Petróleo del Neuquén SA), which executed association agreements with other companies. Similar association schemes have been used in the provinces of Santa Cruz and Río Negro. For example, in the case of Neuquén the cost-recovery mechanism is usually 50 per cent of the production corresponding to such a company until payout.

Notwithstanding the foregoing, Law No. 27,007 established that in the future the provinces and the federal government shall not establish any new areas reserved in favour of state-owned companies. Law No. 27,007 established also that with respect to the areas already reserved but not yet granted, the association agreements might set forth an exploration carry but not during the development stage.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

According to article 59 of the Hydrocarbons Law No. 17,319, the exploitation concessionaire shall pay to the state a monthly royalty of 12 per cent of the production of liquid hydrocarbons at the well head, which can be reduced to a 5 per cent minimum considering the productivity, conditions and location of wells. As a result of the process of transfer of eminent domain from the federal government to the provinces, the federal government has assigned the collection of royalties to the provinces. Royalty rates do not differ between onshore and offshore production. In the event of an extension of the term of an exploitation concession, a 3 per cent additional royalty shall be paid on the applicable royalty at the time of the first extension and up to a total maximum of 18 per cent for any subsequent extensions.

According to Law 27,007, projects of tertiary production, extra-heavy oils and offshore which, due to their productivity, location and other technical and economic unfavourable characteristics, and which are approved by the enforcement authority and by the Commission of Strategic Planning and Coordination of the National Plan of Hydrocarbon Investments, may be subject to a royalty reduction of up to 50 per cent.

Law No. 27,007 also introduced the possibility of obtaining a reduction up to 25 per cent of the royalties applicable and for a 10-year term after the termination of the pilot project, in favour of companies requesting an unconventional exploitation concession within 36 months of October 2014 (date of the Law coming into effect).

Article 60 of Law No. 17,319 provides that the royalty shall be received in cash unless the government, at least 90 days in advance of the payment date, states its intention to receive payment in kind. Such a decision shall remain valid for not less than six months.

Although cash payment of royalties shall be made taking into account the value of the crude oil at the well head, the provinces have challenged the right of concessionaires to discount transportation and treatment costs from the market sale price and have attempted to collect royalties on such price without any discounts. In addition, regulation of oil and gas prices since 2002 caused some provinces to file judicial claims before provincial and federal courts to collect royalties on full international price, regardless of the actual price collected by concessionaires as a result of regulations, taxes or discounts imposed by the federal authorities. Such regulations are still considered illegal by the industry, and several companies have challenged them at both the administrative and court level, having obtained injunctions against them.

Hydrocarbons used by the concessionaire or holder of the permit for the development of the exploitation or exploration shall not be subject to royalty payments. However, for example, provinces have claimed the right to collect royalties on gas used for the generation of electricity for field operations. In any event, recent Supreme Court judgments have rejected provinces' claims in said regard.

Some provinces have passed their own regulations or laws in connection with royalty payments. In such regard, under some public bids to award exploration permits and exploitation concessions, certain provinces have requested bidders to offer royalties over the 12 per cent rate provided for in the Hydrocarbons Law.

Besides any royalties paid to the provinces or the federal government, as the case may be, holders of exploration permits and exploitation concessions shall pay an exploration or exploitation payment to the provinces or to the federal government, depending on whether it was the province or the federal government that granted the licence. Such payment is paid as a consequence of the provincial or federal domain on hydrocarbon fields (fields are provincial or federal as explained in question 10).

There are no tax stabilisation measures in place.

15 What is the customary duration of oil leases, concessions or licences?

Pursuant to article 23 of Law No. 17,319, amended by Law No. 27,007, the maximum terms of validity of exploration permits to be established by the tender shall be those shown below.

For exploration with conventional objective:
- first term, up to three years;
- second term, up to three years; and
- extension period, up to five years.

For exploration with unconventional objective:
- first term, up to four years;
- second term, up to four years; and
- extension period, up to five years.

The extension period may only be requested by the permit holder who has complied with the investment and the other obligations undertaken by it.

Article 35 of Law No. 17,319, amended by Law No. 27,007, provides that the conventional exploitation concessions shall remain valid for a 25-year period from the date of the resolution awarding them, and unconventional exploitation concessions, for a 35-year period. Unconventional exploitation concessions shall include a pilot plan period of up to five years, to be defined by the concessionaire and approved by the enforcement authority at the time of commencement of the concession. The executive branch may indefinitely extend the period of each exploitation concession for up to 10 years, subject to the fact that the concessionaire has complied with its obligations, the concession is producing hydrocarbons and an investment plan consistent with the development of the concession has been submitted. The respective application shall be submitted at least one year before the expiration of the concession.

16 For offshore production, how far seaward does the regulatory regime extend?

Law No. 26,197, which implemented Law No. 24,145, transferred the eminent domain on oil and gas reservoirs located in jurisdictional waters (the first 12 nautical miles from the shore) from the federal government to the provinces. Eminent domain from 12 to 200 nautical miles rests with the federal government.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

For explorations on the continental shelf and in the territorial sea, each of the exploration terms with conventional objective may be increased by one year. Since the enactment of Law No. 27,007, exploitation concessions on the continental shelf and in the territorial sea shall remain valid for a 30-year period.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

The activities shall be entrusted to individuals or legal entities, whether private companies, or totally or partially state-owned enterprises. Foreign companies may operate through subsidiaries or branches.

The Hydrocarbons Law aims to satisfy the need for hydrocarbons within the country, developing reserves for such purpose.

Article 5 of the Hydrocarbons Law provides that holders of permits and concessions shall establish legal domicile within Argentina. Such holders and concessionaires must have adequate financial resources and technical capabilities to perform the operations involved in the rights bestowed. Further, such holders shall assume exclusive responsibility for liabilities associated with exploration and production activities.

Due to the existing dispute with the United Kingdom over the Malvinas (Falklands) islands, and as explained in question 40, companies that operated or currently operate in the Argentine continental shelf through licences or authorisations granted by the Malvinas (Falklands) or British authorities are prevented from doing business in Argentina. Conflict over the Malvinas (Falklands) has regained importance as a result of the recent exploration activities carried out offshore of the islands and authorised by Malvinas (Falklands) authorities.

19 What is the legal regime for joint ventures?

Joint venture agreements could be framed as 'a temporary union of companies' regulated under Law No. 19,550 on Commercial Companies. Such temporary unions of companies do not form a distinct corporate entity but have to be registered with the Office of Corporations (the IGJ) and need to specify a representative, a domicile and a minimum operative fund for registration. Law No. 19,550 provides that members of a temporary union of companies can agree to be jointly but not severally liable to third parties. Law No. 26,005 regulates 'cooperation consortia' that lack corporate personality but have to be registered with the IGJ.

As a practical matter, international model forms of joint operating agreements, such as that of the Association of International Petroleum Negotiators, are framed as temporary unions of companies, by adding a representative (usually, the operator), a domicile and a minimum operative fund.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Reservoir unitisation applies to domestic and cross-border reservoirs by virtue of article 36 of the Hydrocarbons Law, which prescribes that:

> *[...] the competent Authority shall further oversee that no damage or injury is inflicted upon the neighbouring concessionaires or holders of permits, and in the event that no agreement between the parties exists, it shall impose the conditions applicable to exploitation areas adjacent to the borders of the concessions.*

The few cases of shared oil fields have been managed by agreements or understandings by the relevant adjacent operators and non-operating participants, without the intervention of the Argentine Secretariat of Energy. The same is also true for oil and gas fields shared by Argentina and Chile (on the Atlantic front of the Magellan Strait). The Argentine and Bolivian governments ratified, in La Paz on 21 December 1957, reversal notes between YPF and YPFB on rational exploitation of the Madrejones oil field shared with Bolivia. Similar principles were addressed in the Treaty of the Río de la Plata (article 12) agreed with Uruguay.

21 Is there any limit on a party's liability under a licence, contract or concession?

There is no limitation on liability. Before the federal and provincial governments, the liability is joint and several; before third parties, it is several.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

The parent company may be requested to guarantee the subsidiary or branch only in cases where the subsidiary or branch does not meet the financial requirements. The company providing the parental guarantee can be any company meeting the financial and technical requirements. Public bids require companies to post a bond – usually in the form of insurance bonds – to guarantee the full performance of the committed works.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

Most provinces include in their concession and association contracts provisions that mandate a certain minimum of local sourcing for goods and services. There are no specific penalties included in such provisions, and they are seldom applied.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

Article 71 of Hydrocarbons Law No. 17,319 establishes that permit holders and concessionaries shall preferably employ Argentine citizens for all levels of activities, including management, and shall grant special priority in each case to residents of the region in which such work is to be performed. The proportion of Argentine citizens may not be less than 75 per cent of the personnel employed by each permit holder or concessionaire. There are no federal regulations that require the companies to hire a minimum percentage of companies with local capital or with a minimum term of being settled in Argentina.

At provincial level, during recent years most of the provinces enacted regulations that promote and oblige the companies to employ residents of the relevant province and hire companies domiciled within their territories. The minimum percentage established in such regulations varies between 60 per cent and 80 per cent. The cases of the provinces of Neuquén (Law No. 2,755), La Pampa (Law No. 2,675) and Río Negro (Law No. 4,187) can be highlighted.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Transfers of interests in exploration permits and exploitation and transportation concessions require the consent of the provincial or national executive branch, depending on whether the block is under provincial or federal domain. Both the assignor and the assignee shall file the request for the authorities' approval. Authorities evaluate the assignee's financial or technical possibility to comply with the obligations derived from the permit or the concession and, if found satisfactory, they eventually approve the assignment. The whole process takes approximately two years. No pre-emptive rights are reserved for the government, with the exception of the Province of Río Negro. In April 2014, the Executive Branch of the Province of Río Negro enacted Decree No. 348/14 which establishes a 'right of first refusal' in favour of the province in the case of assignment of exploitation concession or exploration permits. At the time of requesting the assignment approval, the province or Río Negro will have a 30-day term to match the offer made by the prospective assignee. Thus, the province would have to be informed of the economic terms of the offer received by the assignor. In our view, the imposition of such right of first refusal in favour of the province is illegal.

26 Is government consent required for a change of operator?

No government consent is required for a change of operator. The operator shall be registered as such with the Oil Companies Registry, under the control of the Secretariat of Energy.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

Some provinces, such as Neuquén (where the Vaca Muerta formation is located) require a signature bonus in order to approve a transfer.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

Law No. 17,319 provides that in relinquishing exploitation concessions to the authorities, the concessionaire shall transfer, for no price, all of the wells, together with the equipment and facilities usually needed for their operation and maintenance, as well as the buildings and fixed or mobile facilities permanently incorporated into the production process. Further, Regulation No. 5/96 issued by the Secretariat of Energy, which regulates the abandonment of wells, provides that when partially or totally relinquishing a concession, the operator shall submit a technical and economic evaluation on the inactive wells backing its intention to temporarily or definitively abandon the relevant wells. The authorities may accept the operator's proposal or modify it (for instance, by requesting – with regard to a certain well – a definitive abandonment instead of a temporary one.

Likewise, the operator shall file an environmental audit assessment describing the existing environmental conditions and remediation to be carried out, as the case may be. Generally speaking, parties to joint ventures are deemed jointly and severally liable for environmental damages.

As to tax matters, most companies operating in Argentina consider decommissioning costs as an accrued cost for the fiscal year, given their certainty.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

Authorities do not usually demand the posting of security deposits for decommissioning costs since the approval of such decommissioning takes place once it has been completed.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Exploitation concessionaires have the exclusive right to obtain a transportation concession for the transport of crude oil and by-products from the federal government, under terms specified in the Hydrocarbons Law and Decree No. 44/91. Transportation concessions include storage, ports, pipelines and any other fixed facilities necessary for the transportation of oil and by-products.

Transportation concessions shall be granted and extended for terms equivalent to such granted to the exploitation concessions related to the transportation concessions.

For as long as the concessionaire's transportation facilities have surplus capacity, the concessionaire must transport third parties' hydrocarbons on an open-access basis, for a fee that is the same for all users under similar circumstances.

Transportation concessions corresponding to pipelines or facilities that do not exceed the boundaries of a single province are exclusively subject to the licensing and jurisdiction of such province.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

The federal executive branch shall award international and interprovincial transportation concessions to such individuals or legal entities that have adequate financial resources and technical competence to perform the operations involved in the rights bestowed. The holders shall assume exclusive responsibility for liabilities associated with the construction and operation of the transportation infrastructure.

With respect to the products (eg, refined products such as motor fuel, solvents, lubricants), they are regarded by law as commodities and, in principle, are subject to free trade.

Transportation concessions corresponding to pipelines or facilities that do not exceed the boundaries of a single province are exclusively subject to the licensing and jurisdiction of such province.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

The key laws and regulations about health, safety and environmental matters are the following:

- article 41 of the Constitution, granting inhabitants rights to a healthy environment;
- Law No. 25,675 on the minimum standards for the preservation and protection of the environment and the applicable penalties;
- Law No. 24,051 on the minimum environmental standards for activities relating to hazardous waste;
- Law No. 25,612 on the minimum environmental standards for activities relating to industrial waste; and
- Law No. 13,660 and Decree No. 10,877/1960 on standards for preventing risks in plants where oil production activities are performed.

The health and safety requirements are those established by Law No. 19,587 on health and safety at work and Decree No. 351/99, as amended. The enforcement authority is the Work Risk Board.

Environmental matters are subject to the concurrent jurisdiction of the federal government and the provinces, each having their own enforcement authorities. So far, the enforcement authority for environmental matters related to oil and gas exploration and production has been the Secretariat of Energy, following the 'leading agency' approach to environmental jurisdiction.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The requirements are those established by Resolution No. 217/2001, passed by the Secretariat of Energy, which established the Argentine fuel quality control programme.

The enforcement authority is the Argentine Institute of Industrial Technology, which will issue a quality certificate after an inspection.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Employees working in Argentina shall be subject to the local labour and social security laws and to the relevant collective bargaining agreement. Collective bargaining agreements are mandatory and have rules about remuneration, journals and other working conditions. The collective bargaining agreement that shall apply to each worker depends on the district in which the activities are carried out.

Article 71 of the Hydrocarbons Law provides that oil operators shall preferably employ Argentine citizens for all levels of activities, including management, and shall grant special priority in each case to residents of the region in which this work is to be performed.

The proportion of Argentine citizens may not be less than 75 per cent of the personnel employed by each permit holder or concessionaire and the minimum percentage that must be reached within the terms established by the pertinent regulatory provisions or bidding terms and conditions.

Ordinarily, each province establishes certain preferences for the employment of its own citizens in exploration and production activities.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Exploitation concessionaires are subject to the general tax regime, and therefore subject to payment of all federal and provincial taxes and municipal rates, including customs duties. The most relevant federal taxes are income tax (35 per cent), VAT (21 per cent) and tax on assets. Dividends are levied at a 10 per cent rate upon distribution to holders of interest in local companies. Provincial taxes are turnover tax (1.5 per cent to 3 per cent) and stamp tax. The general tax regime has particular exceptions, such as the general tax exemption granted to old Mining Code hydrocarbon concessionaires.

Decree No. 1,589, passed in 1989, the terms of which are included in most title concessions currently in force, forbade the federal government from imposing taxes on the import or export of crude oil and natural gas. In addition, concessionaires could not be subject to special taxes levying only the oil business. These guarantees were twisted by the Argentine government as a result of measures adopted immediately after the economic crisis in early 2002. Export taxes ranging from 5 per cent on by-products to 45 per cent on crude oil were imposed by the federal government, giving rise, among other causes of complaint, to the international arbitration claims mentioned above.

Law No. 26,154 has granted tax benefits to promote the exploration and exploitation of hydrocarbons in all the provinces and the continental shelf. To access these benefits, ENARSA would have to be part of the exploration programme and subsequent exploitation concession.

Although this law has been in effect since November 2006, no projects have been approved as a result of the bureaucratic complexities necessary for their implementation.

Law No. 26,360 has created a regime to promote investments in infrastructure and capital goods by granting one of the following two tax benefits to companies whose projects are approved by the government: advanced reimbursement of VAT or income tax accelerated depreciation. The production, distribution and transportation of hydrocarbons are included among the activities promoted by Law 26,360. The benefits created by Law No. 26,360 cannot be accumulated, except for those projects where all of the resulting production is to be exported or in the case of those projects that are part of an industrial restructuring plan or that are part of a 'clean production plan', to be approved by the secretary of environment and sustainable development.

Federal Decree No. 929/13 and Law No. 27,007 created a regime for the promotion of the investment for hydrocarbon exploitation for companies that request the National Commission of Strategic Planning and Coordination for benefits in exchange for a commitment to invest US$250 million. Benefits to be granted are mainly as follows:

- the possibility to export 20 per cent of the oil and gas production without withholdings;
- free availability of the income derived from such 20 per cent export; and
- in the case of lack of sufficiency in self-supply and subsequent suspension of the right to export, companies may sell their production on the domestic market at the export price in pesos, with a preference to obtain free availability currency in the Sole and Free Exchange Market.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Decrees No. 1,589 and No. 1,212, passed in 1989, established the rule of free international trade for crude oil and by-products and the basis of free international prices to be applied in the domestic market for crude oil and by-products. This rule was effective for 10 years between early 1992 and December 2001.

Update and trends

The October 2015 presidential election will result in a new national administration for Argentina (Ms Kirchner is not entitled to a third-term re-election). The three presidential candidates with chances to succeed (Mauricio Macri, Daniel Scioli and Sergio Massa) have stated, to a larger or lesser extent, their belief that the current government-controlled and nationalistic policy needs to be replaced with free-market and international integration policies. The new administration will be allowed to implement such policies through executive regulations, since there are no limitations to oil and gas free market policies under the Argentine Constitution or its legal system. Furthermore, Argentina still has significant legal tools to allow international investments, such as bilateral investment treaties with almost all developed countries, and an oil and gas legal system based on private industry and free-market policies, to which state-regulatory intervention has been – so far – only a regulatory exception based on the Economic Emergency law. As an example, although YPF is now controlled (51 per cent) by the national government, it continues to be a private corporation holding no legal monopoly, and subject to competition with local and international companies. Should free-market and international integration policies be endorsed, as expected, by the new administration, Argentina's large oil and gas unconventional (and conventional) resources, transportation infrastructure, technical and professional capabilities and significant and growing market will be able to attract, once again, the attention of local and international oil and gas players.

As a result of measures adopted immediately after the economic crisis in early 2002, the federal government imposed a 20 per cent tax on crude oil exports, raised afterwards to an up to 40 per cent nominal export tax for prices above US$50 per barrel (bbl) and obliged refineries and producers, by means of compulsory agreements between them, to maintain crude oil prices in the domestic market at a level between US$28.5/bbl and US$32/bbl, that is, at an export parity price. Those agreements expired in March 2004, and the government has sought to keep domestic prices for fuels isolated from the significant rise in crude oil international prices that has taken place in the past couple of years. To such aim, the government, through Resolution No. 394/07 issued by the Ministry of Economy, replaced the 40 per cent export tax limit with a new regime that intended to capture oil producers' extraordinary profits and set an export parity price of US$70/bbl (formerly US$42/bbl).

In December 2014, because of the decrease of crude oil prices, the Ministry of Economy abrogated Resolution No. 394/07 and issued Resolution No. 1077 establishing an export tax scheme with an effective rate of 1 per cent if the international price (Brent minus U$$8 per barrel) is lower than US$71 per barrel. In the event the international price is higher than US$71 per barrel, the effective rate would be variable, for example, 24 per cent (for an international price of US$100 per barrel).

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

Antitrust Law No. 25,156 establishes the prohibition against acts limiting, restricting or distorting competition or constituting an abuse of dominant position and also provides for merger control rules. The enforcement authority is the Federal Antitrust Commission. The Law prohibits economic concentrations of which the purpose or effect is, or may be, to reduce, restrict or distort competition, thus damaging the general economic interest.

In 2012, the Federal Congress passed Law No. 26,741. Article 1 of such law 'declared of national public interest and first priority the obtainment of hydrocarbons self-sufficiency, with the purpose of achieving economic development with social fairness, the creation of employment, the enhancement of competitiveness of all economic sectors, and fair growth of provinces and regions of Argentina'. Based on this, the Federal Executive Branch passed Decree No. 1277/12 which created the 'National Plan of Hydrocarbons Investments,' to be regulated and monitored by the 'National Commission of Strategic Planning and Coordination' to incentive the marketing and transportation of hydrocarbons and fuels. Based on Decree No. 1277/12, the National Commission passed several resolutions with the purpose of implementing applicable regulations to the oil, gas and fuels markets.

In September 2014, the Federal Congress passed Law No. 26,991 which established strict regulations on production and consumption relationships. It is our opinion that Law No. 26,991 and resulting regulations passed by the Executive Branch and the Secretary of Domestic Commerce shall not apply to the production, transportation, refining and marketing of hydrocarbons (oil and gas) and refined products, but the regulatory framework contained in Law No. 26,741, Decree No. 1277/12 and resulting resolutions shall apply to them.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

Law No. 25,156 provides that to verify that an economic concentration does not infringe the prohibition under such Law, it must be notified to the Antitrust Commission when the aggregate 'business volume' of the companies involved in the given transaction exceeds 200 million pesos. By 'business volume', the Law means domestic sales and exports made from Argentina.

The Antitrust Commission must, within 45 business days of the filing of a complete notification form, decide to authorise, subject the transaction to conditions or prohibit it. Once this term has expired without the Antitrust Commission having issued a resolution, the transaction will be deemed tacitly approved.

The whole process generally takes, depending on the complexity of the transaction, between one and two years.

Resolution No. 164/01, passed by the Secretariat of Antitrust, Deregulation and Consumers' Defence, sets forth the criteria applicable by the Antitrust Commission to analyse the mergers and acquisitions notified to it.

Resolution No. 40/01, issued by the Secretariat of Antitrust and Consumers' Defence, sets forth the procedural rules applicable to pre-merger notifications. However, certain exemptions exist, for instance for foreign companies making their first acquisition in Argentina.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

There are no international treaties or other multilateral agreements specific to matters of the industry. However, with respect to the international sale of crude oil and by-products, Argentina has ratified some treaties on international commerce, such as the Convention on the Limitation Period in the International Sale of Goods and its Amendment, New York 1974, Vienna 1980 and the United Nations Convention on the Contracts for the International Sale of Goods, Vienna 1980.

As previously mentioned, Argentina has also ratified treaties with several countries for the bilateral protection of investments, which have led to several arbitration claims, pursuant to ICSID and UNCITRAL arbitration procedures, now being pursued.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Until recently, there have been no special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals. The Hydrocarbons Law clarifies that foreign state-owned companies shall not enjoy any sovereign prerogatives within the Argentine territory.

Activities in Argentina that can be deemed a permanent establishment require the creation of a local entity, be it a subsidiary or a branch.

On 29 March 2007, the Secretariat of Energy passed Resolution No. 407/07, which, in general terms, prohibits any exploration and production activity with those companies that operate in the Argentine continental shelf through licences or authorisations granted by the Malvinas (Falklands) or British authorities.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Exports of crude oil and certain by-products are subject to a regulatory procedure, which, conceptually, determines that volumes intended to be exported need to be previously offered to the domestic market.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Before 1995, the exploration and exploitation of oil and gas reserves were government monopolies carried out exclusively by Petróleo Brasileiro SA (Petrobras). The enactment of Constitutional Amendment No. 09/1995 loosened the federal government's monopoly over such activities, allowing the federal government to contract these from state-owned or private companies.

Additionally, Federal Law No. 9,478/1997 (the Petroleum Law), enacted on 6 August 1997, established a new regulatory framework for the performance of the aforementioned activities and introduced new regulatory agencies, such as the Brazilian National Oil, Natural Gas and Biofuels Agency (the ANP) and the National Energy Policy Council (the CNPE).

The CNPE was created with the main purpose of fostering rational use of the nation's energy resources, reviewing energy matrixes for different regions of Brazil and setting guidelines, while the ANP was created in order to regulate the oil and natural gas sector and to promote the development and production of oil and natural gas in Brazil's sedimentary basins through a transparent and competitive bidding process.

Since 1999, following the opening of the market, the ANP has conducted 13 bidding rounds for exploration blocks. After almost five years with no new licensing rounds, on 14 May 2013, ANP promoted the 11th bidding round, which offered 289 blocks, among which 142 were awarded. In this same year, ANP promoted the first pre-salt round for the Libra area offshore Brazil and the 12th bidding round, which offered 240 onshore blocks with both conventional and non-conventional gas potential, out of which 72 blocks, located across five sedimentary basins, were awarded.

Despite the oil prices and the scandal involving Petrobras, the federal government is planning to hold the 13th bidding round for concession areas in the second half of 2015. The round has been already authorised by the CNPE and is only pending presidential approval. Although the areas to be offered are still under evaluation by the Ministry of Mines and Energy (MME) and the ANP, the overall expectation is that they will most likely include onshore and offshore exploratory opportunities.

Moreover, on 7 February 2013, the CNPE issued Resolution No. 01/2013 regarding incentives for the involvement of small and medium-sized players in oil and gas exploration, development and production. Pursuant to this Resolution, the ANP must hold annual bidding rounds focused in blocks located at mature basins and inactive areas with marginal fields. The environmental feasibility of these blocks and areas must be assessed for by both the ANP and the competent environmental authorities. Blocks with the potential for development of non-conventional resources will be excluded from those specific bids, and the ANP must designate criteria for the eligibility of companies that will benefit from such new policies and measures. The criteria are established in Resolution No. 32/2014, and list small-sized players as the companies qualified as operator 'D' or 'C', and whose production does not exceed an annual average of 1,000 boe/day. In its turn, medium-sized players are those qualified as operator 'B' or 'C', and whose production does not exceed an annual average of 10,000 boe/day. Please note that, for the purposes of calculating the production of the companies, ANP considers the production of their corporate group, either in Brazil or abroad.

Production sharing regime

In December 2010, three separate laws entered into force addressing the exploration and production (E&P) of strategic areas and Brazil's offshore 'pre-salt' reservoirs. These laws introduced a production sharing contract (PSC) regime applying for future licensing of pre-salt areas and certain other areas to be deemed strategic by the government, as well as the implementation of an oil fund to support social and economic development in Brazil.

In addition to the law governing pre-salt areas, a new 100 per cent state-owned company, Empresa Brasileira de Administração de Petróleo e Gás Natural SA – Pré-sal Petróleo SA (PPSA), was created by Federal Law No. 12,304/2010 to represent the federal government in the consortium to be awarded the right to explore and develop a block within the pre-salt area. PPSA does not perform upstream oil and gas activities and does not engage in investments, but has very important roles, such as management, audit and supervision of oil and gas activities performed under the PSC regime, as well as the negotiation of unitisation involving unlicensed acreage.

As mentioned previously, the first specific round focused on the pre-salt area offshore Brasil occurred on 21 October 2013, whose winner was a consortium led by Petrobras having Shell, Total, CNPC and CNOOC as the other contractors. Effects of the new regime are still being assessed and the first outcomes are expected soon.

Production of oil

Notwithstanding the foregoing, is it important to note that the production of oil in Brazil has increased considerably in past years. While Brazil had produced 450.6 million barrels of oil in 2000, in 2013, the production of oil had reached 738,7 million barrels and the volume of proved reserves was around 15.6 billion barrels. According to the ANP, Brazil had more than 100 concessionaires operating in the E&P oil sector and was the country with the 15th largest amount of proven reserves in the world in 2013. At the end of that year, 338 blocks were in the exploration and evaluation phase, 73 fields were under development and 365 fields were in production.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

According to the the MME, in 2013, oil and its related products represented 39.3 per cent of Brazil's domestic energy supply, while natural gas represented 12.8 per cent. Renewable energy sources, including hydraulic, electricity, firewood, charcoal and sugar cane products, represented 41 per cent.

According to the latest data published by the Brazilian Energy Balance regarding final energy consumption, during 2013 oil by-products represented 44.4 per cent, electricity represented 17.1 per cent and sugar cane bagasse represented 11.3 per cent.

In 2012, the country imported 147.8 million barrels, which represented a increase of 29.74 per cent in comparison with 2012 (in the past 10 years, only 2007 and 2013 saw the importation of oil increase in comparison with the preceding year). Exportation of oil in 2013 decreased 30.69 per cent, reaching 138.9 million barrels. In 2012, importation of oil by-products totalled 30.6 million cubic metres, which represented an increase of 12.66 per cent in comparison with 2012.

Even thought the country produces over 2 million boe/day, it is still a net importer of oil byproducts. It should be noted that the importation of oil by-products is related to Brazil's deficiency in refinery capacity, as Brazilian refineries are only capable of refining light oil, whereas the oil produced in Brazil is mainly heavy oil.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The enactment of the Petroleum Law established a regulatory framework for E&P activities and introduced new regulatory agencies for the oil and gas sector. Therefore, pursuant to section 2 of the Petroleum Law, and as mentioned in question 1, the CNPE is the federal government body in charge of setting overall national energy policies for oil activities with the main purpose of fostering the rational use of the nation's energy resources, ensuring the proper functioning of the national fuels inventories system, reviewing energy matrixes for different regions of Brazil and establishing general guidelines.

The ANP is the national regulator of the oil, gas and biofuels industry, and is generally in charge of regulating, contracting and supervising economic activities related to the oil, natural gas and biofuels industry, establishing technical standards for various connected activities, pursuant to article 8 of the Petroleum Law. It is also responsible for establishing the national policy for oil, natural gas and biofuels, to the extent of its responsibilities.

It is important to emphasise that such entities are linked to the executive branch of government.

4 Is there an official, publicly available register for licences and licensees?

The process by which rights for E&P of oil and gas are awarded is fully public. Accordingly, in the event a concession is awarded, an extract of the concession contract will be published in the Official Gazette.

Additionally, a specific website exists for each of the ANP's bidding rounds containing a description of the pertinent blocks and relevant concessionaires, as well as information regarding winning and losing bids. Additional information regarding the blocks and fields may also be found on the ANP's website.

However, since the information on the ANP website is not always up to date, a detailed review of other sources must be performed to obtain all the information pertaining to a specific block or field.

5 Describe the general legal system in your country.

Brazil is a constitutional democracy based upon the law and the separation of powers. All acts, even though final and binding as administrative decisions, may be brought to judicial review. Inter alia, the due process of law and the principle that no individual is obliged to perform or refrain from something except if established in law, vested rights, the res judicata and consummated acts are also protected by the Constitution.

It should be noted that Brazil has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) through Decree 4,311/2002. However, for foreign awards to be enforceable in Brazil they must pass through a validation process before the Brazilian Superior Court of Justice (which may take a couple of years).

Anti-corruption issues have now been further regulated by Federal Law No. 12,846/2013, such as civil and administrative liability of companies regarding corruption against the government. This law establishes certain criteria to input responsibility on legal entities, whether national or foreign, for any act of corruption harmful to the government. Parent companies, subsidiaries, affiliates and consortia will be jointly and severally liable for the performance of corrupt acts. Sanctions include the publication of the conviction and a fine that can reach 20 per cent of gross sales of the financial year preceding the initiation of administrative proceedings. If it is impossible to apply such criterion, the fine shall vary between 6 million and 60 million reais. Such actions may also result in the suspension or partial banning of activities and, in severe cases, the compulsory dissolution of the corporation. Nevertheless, this law also provides some mitigation actions, such as the establishment of an internal compliance procedure, which may reduce the sanction to be applied.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The Brazilian oil and gas sector is regulated by general provisions of the Brazilian Constitution, as well as by a number of different federal laws and ordinances and resolutions enacted by the Brazilian National Oil, Natural Gas and Biofuels Agency (ANP). After the enactment of Constitutional Amendment No. 09/1995 the federal government's monopoly over exploration and production of oil and gas reserves was loosened, allowing the federal government to contract state-owned or private companies.

Pursuant to articles 20 and 176 of the Brazilian Constitution, oil and gas reserves located in Brazil (including the continental shelf, territorial sea and exclusive economic areas) are considered assets of the federal government and, according to article 177, the government can contract the exploration and production of deposits of oil, natural gas and other hydrocarbons.

Federal Law No. 9,478/1997 (the Petroleum Law), enacted on 6 August 1997, establishes the regulatory framework for these activities, especially by establishing:

- the creation of the ANP and the National Energy Policy Council (CNPE);
- the concession regime, which is the main regime for exploration and production in Brazil;
- the minimum requisites for the tender protocol and concession contracts; and
- the government takes.

Federal Law No. 11,909/2009 (the Gas Law) was enacted to specifically regulate gas activities in Brazil, clarifying the legal background for private investors. The Gas Law gave the Ministry of Mines and Energy the power to decide which pipelines must be built or extended and established provisions focused on projects related to gas transportation, gas storage and LNG facilities.

Federal Law No. 12,351/2010 establishes the basic guidelines for exploration and production within pre-salt and strategic areas, which shall be made under the production sharing regime (the Pre-Salt Law). Additionally, it has established:

- the use of a production sharing agreement (PSA) instead of a concession agreement in such areas;
- Petrobras as operator of all exploration and production activities within those areas, with a minimum 30 per cent stake;
- a public company (the recently created Empresa Brasileira de Administração de Petróleo e Gás Natural (PPSA)) as the manager of the PSAs;
- the need for other companies to enter into a consortium with Petrobras and PPSA;
- minimum requirements for the unitisation, pursuant to ANP's regulations; and
- the government takes for the PSA.

Federal Law No. 9,847/1999 and ANP Ordinance 234/2003 are the main rules regarding imposition of penalties, including fines, to companies. In 2014, the ANP enacted a new resolution aimed at changing the criteria used for imposing administrative penalties on reoffending companies – ANP Resolution No. 64/2014. In accordance with this resolution, a company will be considered a reoffender if it commits a new infraction within two years of the full payment of the precedent fine or its extinction by ANP (as opposed to ANP Resolution No. 8/2012's wording which refers to the moment when the final administrative decision is rendered). In the event companies decide to waive their right to appeal and pay the penalty with the 30 per cent legal discount (as set forth in Law No. 9,847/99), the two-year term for reoffenders shall be reduced to six months.

The tender protocols used in the bid rounds, as well as other ordinances and resolutions enacted by ANP from time to time, as the main regulator of the activity, are also key instruments for the performance of the E&P activities and binds all concessionaires.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

Expropriation does not apply. The concession agreements or PSC cannot be terminated at ANP's discretion.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The Petroleum Law established a new regulatory framework for the performance of oil and gas activities and introduced the ANP and the CNPE, which are the regulatory bodies in charge of regulating oil activities, according to the following:

- the MME is primarily responsible for planning the use of oil and natural gas resources. The MME proposes to the CNPE, after consultation with the ANP, the areas that will be subject to the concession or PSC regime. The MME also proposes to the CNPE the technical and economic parameters for PSCs and approves the drafts of bid documents and PSCs prepared by the ANP;
- the CNPE has the main purpose of fostering rational use of Brazil's energy resources, ensuring proper functioning of the national fuels inventories system, reviewing energy matrixes for different regions of Brazil and establishing guidelines; and
- the ANP, as the national regulator of the oil, gas and biofuels industry, is generally in charge of regulating, contracting and supervising economic activities related to the oil, natural gas and biofuels industry, establishing technical standards for various connected activities.

It should be noted that, although Petrobras is controlled by the federal government, it does not issue any sort of regulation for oil exploration and production, being separate from ANP, CNPE and MME and acting as a normal oil company. In addition, the PPSA has important roles, such as management, audit and supervision of oil and gas activities performed under the PSC regime and the negotiation of unitisation involving unlicensed acreage.

9 What government body maintains oil production, export and import statistics?

The ANP is the government body responsible for maintaining updated data related to oil activities, including production, export and import statistics. All concessionaires must supply the ANP with such data. Failing to provide any required information may subject the concessionaire to administrative sanctions imposed by ANP Ordinance Rule No. 234/2003.

With respect to the public availability of such information, the ANP annually issues the *Statistics Yearbook* with all information and data related to the oil and gas sector.

It is important to note that the import and export of oil may only be exercised upon the licensing of the concessionaire (granted by the ANP) and must always follow the guidelines outlined by the CNPE. However, this does not affect the ANP's responsibility for updating data, as mentioned above.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

Pursuant to articles 20 and 176 of the Brazilian Constitution and article 3 of the Petroleum Law, oil, natural gas reserves and hydrocarbons located within the Brazilian territory are considered assets of the Federal Union.

Notwithstanding this, article 177 of the Brazilian Constitution allows the government to contract the E&P of oil and gas. Companies holding concession rights to explore such reserves are entitled to the property of their production under the concession regime. Companies contracted under the PSC are entitled to the profit oil and to recover certain costs through the cost oil.

With respect to mineral rights on private lands, as in the case of onshore blocks, the companies or consortia that hold oil and gas exploration rights may negotiate the acquisition of the property or the right of way directly with the landowners, following the principles of private law.

In any event, according to the Constitution, properties are subject to the public interest. In light of article 8, VIII, of the Petroleum Law, the ANP has competence to declare the public use or institution of utility easements in an area to be used in E&P activities. Therefore, in the event of an unsuccessful friendly negotiation between companies and landowners, for instance, the companies or consortia that hold the oil and gas exploration rights may submit to the ANP a request for declaration of the public use of the area or institution of utility easements, such as rights of way, in accordance with the ANP's regulations.

With the instructions from the proceeding led by the ANP, the president may issue a decree declaring the public use of the area or instituting a utility easement and authorising the companies or consortia to promote, at their own expense, the total or partial expropriation or the institution of utility easements.

It is important to state that the landowners are entitled to a percentage of the production in their lands, which may vary from 0.5 per cent to 1 per cent, to be defined by the ANP, according to article 52 of the Petroleum Law.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

In Brazil, upstream activities are performed both onshore and offshore, although most of the oil production derives from the offshore fields. In 2011, 702.471 million barrels of oil were produced offshore while 66.441 million barrels were produced onshore.

In order to perform the above-mentioned activities, the concessionaire must obtain an environmental licence granted by the Federal Environmental Protection Agency (IBAMA). In the event of a bidding round carried out by the ANP, the CNPE must observe all legal and environmental restrictions concerning the offered areas.

Further, the Constitution provides that mineral resources located on indigenous lands may only be exploited by means of a special authorisation granted by the National Congress.

In addition, article 3 of IBAMA Ordinance Rule 39 of 2006 provides that any activity related to the exploration and production of oil and gas in areas within the National Marine Park of Abrolhos is expressly forbidden. Due to recent oil spills and accidents involving the industry, some working groups were created in the National Congress in order to investigate and study the situations and alternatives of stricter rules on environmental issues. It is likely that new stricter regulations will be enacted in view of these facts.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

From the end of Petrobras' monopoly in the 1990s and prior to the approval of the Pre-Salt Law, the only regime applicable for the granting of exploration and production rights in Brazil was the concession regime. At the end of 2010, the PSC regime was established to govern exploration and production on pre-salt areas and areas deemed strategic by the federal government, with the first specific round occurring on 21 October 2013.

Therefore, there are two different regulatory frameworks for the granting of exploration and production rights in Brazil

Under the concession regime (similar to a tax-royalty regime), companies holding concession rights to explore such reserves are entitled to the property of their production. Under the PSC regime, Petrobras is the sole operator with a minimum 30 per cent participating interest in the consortium to be awarded with the PSC, while PPSA will also be involved (its interest shall be defined at the bidding auctions). Effects of this new regime are still being assessed and the first outcomes are expected soon.

For participating in a bid round, companies must express their interest by making a pre-qualification and paying a participation fee, which, in addition to allowing participation in the bid, gives the right to access data of the block or blocks the companies are interested in. The bid selection criteria are described in question 18.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

Under the concession regime, the government has no right to participate in a licence, except indirectly through the federal government-controlled oil company, Petrobras.

However, under the PSC regime, Petrobras is required to be the sole operator in all blocks, being granted a minimum ownership interest of 30 per cent in the consortium to be formed with PPSA and private companies. The costs and investments required for the performance of the PSC will be fully borne by the consortium, excluding PPSA. Notwithstanding the foregoing, the government may choose to participate in the investments, in which case it will be required to bear the risks corresponding to its ownership interest. The participation of the government in such investments must be further regulated by the bid documents or specific legislation, or both.

PPSA will represent the federal government in the consortium and will be responsible for the management of the PSCs. PPSA will not perform upstream oil and gas activities and shall not make investments, but has very important responsibilities, including:

- management, audit and supervision of oil and gas activities performed under the PSC regime;
- management and control of costs arising from PSCs;
- participation in operating committees and election of half of their members (including the chair); PPSA will have qualified voting rights and veto powers over operations; and
- negotiation of unitisation involving unlicensed acreage.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Royalties are due for both onshore and offshore production, pursuant to the Petroleum Law and Decree No. 2,705/98. The rates are often 10 per cent of the total amount of the monthly volume of oil produced. Nonetheless, according to article 12 of the aforementioned Decree, royalty rates may be reduced to 5 per cent, depending on the geological risks at a given field. Additionally, the royalty rate for each oilfield is determined under the concession agreement entered into by the concessionaire and the ANP.

In the PSC regime, the subject of royalties has resulted in great discussion regarding the question of the percentage to be collected from contractors. Pursuant to article 2 of Federal Law No. 12,734 of 30 November 2012, the authorities raised the amount to 15 per cent for the blocks to be granted under the PSC regime, as opposed to the present 10 per cent applicable to concession contracts.

Besides royalties, federal, state and local governments are also recompensed through other 'government takes', which are defined as all payments to be made by a concessionaire as a result of the activities of exploration and production of oil and natural gas, such as:

- signature bonus – a lump sum payable in a single instalment upon execution of the concession agreement;
- special participation – extraordinary financial compensation payable in the event that high volumes of oil or natural gas are produced, or a certain field otherwise enjoys high profitability; and
- payment for area occupation or retention – this consists of a yearly sum to be paid for the occupation or retention of oil prospecting areas. The ANP sets the amounts to be paid in the bidding documents and concession agreements; nonetheless, article 28 of Decree No. 2,705/98 provides minimum and maximum standards for charging such amounts.

It is important to note that, unlike the concession model, the signature bonus under the PSC regime is not a criterion for the evaluation of the bidding offers, but a fixed amount to be defined by the MME in each concrete case. The special participation and payment for area occupation or retention, both part of the government take in the concession regime, are not applicable under the PSC regime.

Under the PSC regime, the oil company produces oil for the government in exchange for a proportion of the oil produced. The initial production, generally known as 'cost oil', is sold and used to reimburse the investor for certain exploration and development costs. The remaining oil, the 'profit oil', is allocated between the state and the contractor.

Regarding tax stabilisation, as per the applicable rules, in general terms, new provisions increasing the burden on the taxpayer will only be in force in the fiscal year following the fiscal year in which the relevant provision was enacted, with a few exceptions (taxes that regulate markets, such as tax on financial transactions (IOF), tax on industrial products (IPI) and customs duties). In any event, it is also important to note that no bilateral investment treaties are in force in Brazil.

15 What is the customary duration of oil leases, concessions or licences?

In general terms, concessions are granted for a period of 30 years, considering all phases of the oil activity.

Typically, the exploration phase lasts from two to eight years, usually divided into two different periods with specific commitments. By the end of the first period, which requires only seismic data acquisition, the concessionaire may relinquish from the area or decide to enter into a second exploratory period, which usually requires the commitment of one well.

The production phase starts upon the declaration of commerciality of a field within the exploration phase, and may last for 27 years thereof.

Concessionaires are also entitled to request the extension of each of these phases in the case of, for instance, delays in the obtainment of environmental licences, a well in progress at the end of the exploration phase or to appraise a discovery in order to declare if it is commercially feasible or not. All cases must be previously approved by the ANP.

In its turn, the PSC regime has the term for its contracts limited to 35 years, as defined in Law 12,351/2010, regardless of the duration of the exploration and production phases.

16 For offshore production, how far seaward does the regulatory regime extend?

Pursuant to the Montego Bay Treaty, of which Brazil is a signatory party and Law No. 8,617, from 4 January 1993, the exploration of oil and natural gas reserves and other mineral resources can be carried out within 200 nautical miles from the Brazilian coast, which comprises the territorial sea and the exclusive economic zone.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

The Petroleum Law established a new regulatory framework for the performance of oil and gas activities and introduced new regulatory agencies, such as the ANP and the CNPE, which represented the opening of the market with the enactment of Constitutional Amendment No. 09/1995, which loosened the federal government's monopoly over these activities, allowing the federal government to contract these from state-owned or private companies.

As from the opening of the market, the ANP has conducted 12 bidding rounds on which onshore and offshore blocks were subject to the same general conditions, including the model of the concession contract and one round for the pre-salt area. Notwithstanding this, some differences, such as local content obligations and payment of compensation to landowners are found (see question 8).

For environmental licensing, the competent authority for offshore blocks is IBAMA, while for onshore blocks the relevant state regulatory agencies are competent.

It is also important to state that for areas within the pre-salt areas as defined in the Pre-Salt Laws and areas to be deemed strategic by the government, the PSC regime shall apply.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

All state-owned and private oil companies may participate in the concession bidding rounds carried out by the ANP. The tender protocol issued for each bid must establish all the technical, financial and legal requirements with which a concessionaire must comply to be qualified as non-operator, operator A, B or C. The qualification procedure for concession bidding rounds has recently changed with the enactment of Resolution No. 18/2015. The outcomes of this new resolution are still to be assessed with the upcoming 13th bidding round. In any case, the main change is that the qualification of the participants will now be performed after submission of the bids, instead of a prior mandatory qualification.

In general terms, 'non-operator' is the company that will join the consortium, but will not be able to conduct the performance of the operations, operator A is the company qualified by the ANP to operate in any block offered in the bid, while operators B and C are eligible to operate in some restricted blocks to be defined by the agency.

Bidding offers may be submitted by companies individually or jointly in consortium. In the case of a consortium, a qualified operator between them shall be indicated.

Under the concession regime, the criteria for the evaluation of bidding offers are signature bonus, minimum exploration programme and local content.

There is no restriction on foreign participation, provided that the foreign investor incorporates a company under the Brazilian law and complies with all technical, legal and financial requirements established by the ANP.

It is important to note that, unlike the concession model, the signature bonus under the PSC regime is not a criterion for the evaluation of the bidding offers but a fixed amount to be defined by the MME in each concrete case. The special participation and payment for area occupation or retention, both part of the government take in the concession regime, are not applicable under the PSC regime.

Under a production sharing agreement, the oil company produces oil for the government in exchange for a proportion of the oil produced. The initial production is sold and used to reimburse the investor for exploration costs. The remaining oil is allocated to both the state and the investor.

The use of a signature bonus in the PSC system has the objective of anticipating oil production revenues from the pre-salt fields and is a fixed amount established in the final tender protocol, which the contractor must pay to the government upon signature of the PSC. Through this system, the government is able to obtain funds that otherwise it would only have access to upon the start-up of production of the prospect, four or five years later, paid out as royalties. The signature bonus is defined by the CNPE before the auction.

Under the PSC regime, Petrobras is the sole operator with a minimum 30 per cent participating interest in the consortium to be awarded the PSC. Additionally, private parties and even Petrobras are entitled to bid for the remaining participating interest in the PSC consortium.

The winner of the auction will be the company that proposes the highest percentage of interest in the remaining profit oil to the government, which will be represented in the consortium by PPSA.

Therefore, under this bidding regime, Petrobras and the winner of the bid bear 100 per cent of the exploration and production costs, but receive as payment a share of the profit oil and have the right of cost oil (oil and natural gas equivalent to exploration and production costs) reimbursement, subject to the payment of government take.

19 What is the legal regime for joint ventures?

During the ANP concession bidding rounds, companies are allowed to bid as individuals or as consortia. As an individual, the company shall carry out the operations, with no formal requirements to incorporate a new entity. As a consortium, the companies must enter into a consortium agreement, which must provide the joint and several liability for the obligations undertaken under the concession agreement. In the case of a foreign entity, it is important to emphasise that it must incorporate a company under Brazilian law, with head offices and management in Brazil.

Additionally, the parties may enter into joint operating agreements (JOAs) that usually also provide that both parties are jointly and severally liable for the obligations of the venture. Possible risks to the co-venturers are associated with the acts of the operator. The undivided interest is structured through a consortium agreement, which is widely used in the upstream sector. Other than the consortium agreement, the JOA is a private instrument between the parties and there is no obligation to submit it to the ANP.

The operator can carry out operations without obtaining the non-operating, co-venturers' approval. Therefore, unless other co-venturers can prove negligence of the operator, they will all share the losses and damages caused by the acts of the operator.

Nevertheless, under the PSC regime, consortia may be formed in two different ways, either by a direct negotiation regime or the bidding regime. In the direct negotiation regime, Petrobras will join PPSA in a PSC consortium. Petrobras will bear 100 per cent of the exploration and production costs, but will receive as payment a share of the profit oil and will have the right to cost oil reimbursement, subject to payment of government take.

In the bidding regime, Petrobras is the sole operator and assured with a minimum 30 per cent participating interest in the consortium ultimately awarded with the PSC contract. PPSA is assured with a minimum participating interest in the PSC consortium to be defined by the CNPE. Private parties and even Petrobras are entitled to bid for the remaining participating interest in the PSC consortium.

Petrobras and the winner or winners of the bid bear 100 per cent of the exploration and production costs, but receive as payment a share of the profit oil and have the right of cost oil (oil and natural gas equivalent to exploration and production costs) reimbursement, subject to payment of government take.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Law 12,351 of 2010, which establishes the PSC regime, altered the provisions related to unitisation contained in the Petroleum Law. Below is a brief summary of the result of said changes and the new regulation surrounding unitisation for both the PSC and concession regimes.

In the case of domestic reservoirs, concessionaires must prepare a joint or separate evaluation plan and negotiate the corresponding unitisation agreement to be approved by the ANP.

If concessionaires do not reach an agreement, the ANP must determine the terms of such unitisations based on best industry practices. Brazil has not yet experienced a situation of cross-border reservoirs, which imply the negotiation and execution of an agreement between two different countries.

It is important to highlight that specific rules for unitisation procedure of a deposit extending through areas under different legal-regulatory regimes – and the calculation of government takes in such scenarios – are established in ANP Resolution No. 25, enacted on 8 July 2013.

In fact, concession, PSC and direct negotiation regimes, which are regulatory frameworks currently in force in Brazil, have very different cost and taxation structures, making it hard to reconcile the rules for payment of government takes among them. For such reason, the Resolution establishes that the fiscal regimes must apply independently and proportionally to each tract comprising the unit interval, in accordance with relevant legal and regulatory rules.

Therefore, the unitisation agreement to be entered into in those cases must establish the relevant obligations that must be discharged by parties regarding government and third-party takes in accordance with the contracts that govern the licensed areas comprising the unit interval.

21 Is there any limit on a party's liability under a licence, contract or concession?

No. Concessionaires are joint and severally liable before ANP and the federal government and third parties for their obligations under the relevant concession agreement or PSC, regardless of being operator or non-operator. In addition, please note that parent company guarantees may also be required at ANP's discretion as further explained in question 22.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

As per the concession contracts or PSC, companies must, at their sole expense and risk, provide the ANP with one or more financial guarantees to ensure compliance with minimum exploratory programmes. Acceptable guarantees include an irrevocable letter of credit (which is the most common form of financial guarantee provided by concessionaires), security bond, oil pledge or other performance certificates pursuant to the conditions set forth in the respective bidding documents and contracts.

Any letter of credit or performance bond will be returned upon certification by the ANP that all required minimum exploratory programmes for the exploration period have been performed.

If concessionaires fail to fulfil the minimum exploratory programmes, the ANP is authorised to foreclose the letter of credit or performance bond as compensation for such failure, without prejudice to other obligations and duties that the concessionaires are obliged to comply with and the right of the ANP to pursue other possible remedies.

Notwithstanding the foregoing, a performance guarantee (a parent company guarantee) is sometimes required at ANP's discretion to guarantee the performance and obligations of the concessionaire under the concession contract, especially when companies are qualified based upon its group's experience. The performance guarantee must be issued by a company directly or indirectly controlling concessionaire (the Brazilian entity), not necessarily being the ultimate parent, in accordance with the template provided in the relevant tender protocol, which is non-negotiable. By means of such a guarantee, the grantor is liable for all obligations undertaken by the concessionaire under the respective concession contract or PSC vis-à-vis ANP.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

As explained previously, the minimum local content commitment is a criterion for evaluation of the bid in the concession regime and, in the PSC regime, it is defined in the tender protocol. Therefore, companies must comply with the respective minimum local content percentages by acquiring local services and goods. In general terms, the local content is measured by the ratio between the amount of national goods and services and the total amount of good and services acquired during the execution of the exploratory or development activities. The local content percentage is verified by certificates issued by specific companies accredited by ANP for this purpose. The certificates must be delivered to the concessionaires by the suppliers. ANP performs audits at the end of the respective phase where the local content commitment is applicable and, if the commitment is not accomplished, the ANP may impose a penalty of 60 per cent over the amount not complied with, should the percentage of local content not complied with be less than 65 per cent. If the amount not complied with is more than 65 per cent, the penalty may vary between 60 and 100 per cent of the amount not complied with. In 2013, the ANP published new rules and criteria for the procedure of local content certification.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

In addition to the minimum local content commitment further explained above, the companies operating in Brazil shall allow for Brazilian companies to participate in the supply of goods and services to be used in the granted areas. Moreover, the companies shall even prioritise hiring Brazilian companies, whenever their price, technical conditions or delivery deadlines are not less favourable than those presented by foreign competitors, according to the rules established under the respective concession contract or PSC. It is also important to state that, as it is possible to not find competitive national offers, the contract sets the possibility of the company to apply before the ANP for a waiver request for some local content items – by submitting necessary evidence of the above. In case ANP accepts the request, then company will be exempted from the respective obligation.

Regarding labour laws, companies operating in Brazil are required to hire local personnel as employees, respecting the maximum proportion of two-thirds of Brazilian employees and one-third of foreign employees in each branch, main branch or agency. Also, the proportion shall be observed regarding the payroll of the companies, which means that the remuneration received by the foreign employees shall observe the same proportionality related to the quantity of employees. For further information on this matter, see question 34.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Yes. The ANP's prior authorisation is required for any and all transfer of rights for exploration and production of hydrocarbons, including mergers and spin-offs. Direct and indirect transfer is subject to the same rules (ie, if the company that holds the rights ceases to be an affiliate of its parent company (that which issues the performance guarantee), the ANP considers it an assignment, and, therefore, its prior approval must be obtained).

For transfer of operatorship, the new operator must fulfil the requirements for technical, legal and financial qualifications set forth in the latest bid protocol.

After the presentation of the relevant documentation before the ANP, the agency has 60 days to issue the approval, denial or request for further documents it shall deem necessary, for agreements signed in rounds 0, 1 and 2 and, for agreements signed in the other rounds, 90 days.

If the ANP requests modifications of further documents, the interested party has 30 days to fulfil the requirement.

After approval of the assignment, the parties must present to the ANP the amendment to the concession agreement within 30 days counted as from the official communication.

No pre-emptive right is reserved for the government.

26 Is government consent required for a change of operator?

Yes. In order to transfer operatorship, the new operator must fulfil the applicable technical, legal and financial qualifications set forth in the latest bid protocol for qualification purposes, and such transfer is subject to ANP approval, in the case of areas under the concession regime, or to MME approval, in the case of pre-salt areas. For further information about the assignment process, see question 24.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

No, this is not applicable.

Decommissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The last stage of the concessions is the deactivation of the facilities and devolution of the concession area.

Decommissioning is regulated by the Petroleum Law and special regulations enacted by the ANP.

On the termination of the concession, some goods may be transferred to the federal government's property and the ANP's administration, according to the rules set in the relevant regulations. In general, such goods are those that are deductible for the purposes of calculating the special participation due to the government and that, at the ANP's sole discretion, are necessary to allow the continuity of the operations or are susceptible to the utilisation of public interest.

The planning regarding decommissioning shall be contained in the relevant development plan of a field and revised periodically.

It is also important to note that this stage is subject to specific financial guarantees. The concessionaire shall present to the ANP, if requested, a guarantee by means of insurance, letter of credit or contingency fund, or other forms of guarantee accepted by the ANP. The value of the guarantee shall be revised every time a change in the development plan impacts on the costs of decommissioning.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

Upon the ANP's request, the concessionaire must present a guarantee for decommissioning and abandonment. Such a guarantee may take the form of insurance, a letter of credit, contingency fund or other security acceptable to the ANP. The amounts are based on the field's respective development plan and shall be revised accordingly in the event that any modification in such plan changes the costs of operations for decommissioning and abandonment. In the case of a contingency fund, any possible balance will be returned in favour of the concessionaire.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Pursuant to article 177, IV, of the Brazilian Constitution, the transportation of crude oil and its by-products by maritime vessels or pipelines constitutes a federal government monopoly.

ANP Ordinance Rule No. 170/2002 provides regulation for the maritime transportation of crude oil and its by-products, while ANP Ordinance Rule No. 170/1998 sets forth the basic rules for the construction and operation of transportation facilities.

In addition to the ANP regulation, the National Maritime Transportation Agency (ANTAQ) regulates the maritime transportation of oil.

Only Brazilian navigation companies, duly authorised by ANTAQ and the ANP, may perform maritime transportation within the country. In addition, according to Brazilian law these navigation companies may charter foreign vessels to transport oil and its by-products with ANTAQ authorisation.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

With regard to the transportation of crude oil and its by-products, all transportation activities must be carried out by Brazilian companies or consortia. In the case of maritime transportation, companies must be authorised by ANTAQ (see question 30).

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Both the ANP and IBAMA are responsible for the safety and environmental regulations regarding upstream activities. As the oil and natural gas regulatory body, the ANP supervises the compliance with environmental standards.

The licences applicable for the oil and natural gas sector granted by IBAMA are preliminary licences, installation licences and operating licences.

In addition, there are specific environmental licences applicable to upstream activities, such as licences for seismic research, preliminary licences to drill and preliminary production licences.

Further, the ANP Ordinance Rule No. 3 of 2007 regulates the process for environmental licensing related to rigs and the Ministry of Environment Ordinance Rule No. 422 of 2011 sets forth the procedures for federal environmental licensing of activities and projects for exploration and production of oil in marine and transition zones.

The environmental licensing procedure in Brazil embraces the analysis of documents, projects and environmental studies submitted by the entrepreneur.

In order to obtain environmental licences for oil activity, the Brazilian regulation imposes the presentation of an environmental impact assessment and an environmental impact assessment report by the entrepreneur, which is mandatory for facilities that perform activities resulting in significant environmental impact. At present, the environmental licensing of such activities is also subject to the payment of an environmental compensation to a maximum amount of 0.5 per cent of the total implementation costs of the relevant undertaking.

The performance of upstream activities without the necessary environmental licensing may subject the company to administrative and criminal sanctions.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The ANP is the government body responsible for gathering all information concerning the quality of the lubricants sold in Brazil and to supervise the fuels market through its online system named Sistema de Informações de Movimentação de Produtos.

Therefore, lubricants must be registered before the ANP, as determined by article 8, XVIII, of the Petroleum Law, and collection of used lubricants must comply with the ANP Ordinance Rule No. 20/2009.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

All foreign or Brazilian companies established in Brazil are required to hire local personnel as employees, observing the proportion of two-thirds of Brazilian employees and one-third of foreign employees in each branch, main branch or agency. Thus, the proportion shall also be observed regarding the payroll, which means that the remuneration received by the foreign employees shall observe the same proportionality related to the quantity of employees.

In order to work in Brazil, a foreign employee must have a working visa and fulfil all the requirements established by the Brazilian National Immigration Council, and the employment agreement shall be duly approved by the Ministry of Labour and Employment.

In this sense, there are two types of visa that allow foreign employees to work in Brazil:

- a permanent visa is granted to a foreign citizen who will take a managerial position in a Brazilian company, and is usually granted for a maximum duration of five years; and
- a temporary visa is granted to a foreign national with an employment relationship with a Brazilian company who is coming to Brazil for short periods of time.

Law No. 6,815/80 provides the applicable penalties in the event of non-compliance with the immigration laws.

In addition to the above, please note that ANP also encourages the use of local workforce by establishing minimum local content requirements for acquisition of services and goods by the concessionaires for their activities as explained in question 23.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

All income generated by the exportation of oil and gas shall be taxed, by the federal income tax, as any other income generated with the exportation of any other type of goods, being subject to general income tax legislation.

In this sense, the following taxes apply to oil and gas activities, among others:

- import duty;
- IPI;
- tax on distribution of goods and services;
- tax on services;
- contribution to social security;
- contribution on economic intervention; and
- IOF.

In addition, Brazilian companies may acquire assets to be used in petroleum activities (equipment and spare parts) through a special system of temporary admission of goods under the REPETRO system.

Under the REPETRO regime, taxes generally incurred on imported equipment are suspended upon the equipment's entry into Brazilian territory. The regime operates through a special type of temporary admission regime and a symbolic exportation system, by which Brazilian companies are allowed to acquire equipment and spare parts to be used internally, as if such assets had been exported and subsequently imported in the special regime for temporary admission described above.

Accordingly, Executive Order No. 844/2008 defines which type of equipment and spare parts may benefit from the REPETRO system.

In order to enjoy the full benefits of REPETRO, a Brazilian company must fulfil certain requirements, such as the imported equipment being contractually bound to leave Brazil after a definite period of time and the property remaining with the foreign supplier during its stay in Brazil. For such a reason, a rental or an operational leasing of equipment may be performed under the special temporary admission regime, in order to benefit from the REPETRO regime.

Update and trends

Despite the low oil prices and the corruption scandal involving Petrobras, the federal government is planning to host, probably in the second half of 2015, the 13th bid round for concession areas. This bid round has already been authorised by CNPE, pending only presidential approval. On 20 April 2015, ANP announced on its website the areas being considered to be included in the 13th bid round. The areas are divided into 23 sectors located within 10 sedimentary basins, with both onshore and offshore opportunities: Amazonas, Parnaíba, Potiguar, Recôncavo, Sergipe-Alagoas, Jacuípe, Camamu Almada, Campos, Espírito Santo and Pelotas.

Also in 2015, the ANP intends to promote the first bid round for natural gas transportation pipelines, including the Itaboraí-Guapimirim pipeline. The concession for the operation of the natural gas transportation pipeline will have a term of 30 years, and may be extended for an equal period under the conditions to be set out in the concession contract. This bid round represents not only the opening of the concession regime in gas transportation, but also a deverticalisation in the Brazilian gas industry. The owner of nearly all Brazilian gas pipelines, Petrobras, may participate in this project only as a carrier because of changes in the regulatory framework: the carrier can no longer be the same entity (or an affiliate) as the transporter. As Petrobras is the only company interested in having its gas carried in this pipeline, thanks to the COMPERJ project, it cannot have any relation with the transportation, justifying the bidding round.

Moreover, the ANP published a draft Resolution reviewing the ANP Ordinance No. 170/1998 laying down the rules for the construction, expansion and operation of handling facilities of oil, oil products and natural gas, including liquefied natural gas. Among the changes made by the draft, we highlight that the Resolution will also regulate the construction, expansion and operation of facilities or production flow and transfer pipelines associated with the exploration and production of oil and natural gas that are not part of granted E&P areas. The facilities covered by the draft Resolution include all systems essential to their operation, such as pumping stations, storage tanks, compressor stations, delivery or receiving points of natural gas and measuring stations for operational purposes or transfer of custody, among others.

In 2014, the Federal Public Prosecutor of Bahia and Paraná filed public civil actions requesting the suspension of the concession contracts signed in the 12th bidding round in areas which are known to have potential for the exploration of unconventional gas. In summary, the Federal Public Prosecutor understands that there is a lack of proper regulatory framework and of more accurate information regarding the feasibility of using this technique. The decision of the lower court judge suspended activities related to unconventional gas, at least until environmental studies are performed, as well as the environmental body regulation on hydraulic fracturing method is enacted. This proceeding is still ongoing and new developments are expected for 2015, when higher courts will review the decision and rule if the suspension shall be maintained or not.

As to the local content policy, it is important to mention that, although originally created to foster the national industry, the local content obligations are no longer an incentive in this regard. Players are not achieving the minimum percentages and penalties are becoming more and more common. Accordingly, it is expected that ANP will soon revise the local content rules that provide for penalties and also consider a bonus scheme for those players complying with the local content commitments.

Although not directly related to the regulation of the oil sector, it is important to highlight Petrobras' current situation. Because of an investigation being carried by the Brazilian Federal Police, known as 'Operação Lava-Jato' (Operation Car Wash, a reference to money laundering), many directors of Petrobras and of its contractors have been arrested. Pursuant to the investigations, the individuals involved have supposedly embezzled millions from contracts entered into by Petrobras and contractors. As a consequence, Petrobras has suspended several contracts, impacting the Brazilian oil and gas industry negatively. The expectation is that the investigation may affect various companies in the oil and gas chain, and may even present an opportunity for investors to acquire the assets or even the companies themselves as certain players are supposedly selling some of their projects and participating interests to retain the cash needed for their investments and for reorganisation. Finally, especially due to all challenges faced by Petrobras, it is also important to note that the government is discussing the relaxation of Petrobras's mandatory operatorship and minimum participating interest in areas subject to the PSC regime.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

No. Prices for oil and gas are stipulated according to the market price and may vary according to internal and external factors, including but not limited to the international economic scenario.

However, besides the marketing of oil and gas, the ANP shall set a minimum price for the oil to be considered by the ANP for the specific purpose of calculating government takes or eventual cost oil, namely, this price shall be the average of the price of four types of similar oils according to the international market.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

On 29 May 2012, a new antitrust law entered into force in Brazil (Law No. 12,529/2011).

Under this new regime, the Administrative Council for Economic Defense (CADE) became the sole administrative agency in charge of both merger control and antitrust investigations in Brazil. CADE is composed of three divisions: the General Superintendence (the Superintendence), the Administrative Tribunal and the Department of Economic Studies, which provides the authority with economic analysis support.

The Superintendence is responsible for launching and leading investigations into alleged antitrust violations. Upon concluding the investigations, the Superintendence shall present the case to the Administrative Tribunal, which is composed of seven commissioners and ultimately takes the final decision regarding the case. The final decision of the Administrative Tribunal will be final and binding, but subject to judicial review.

According to article 10 of the Petroleum Law, the ANP shall give notice to the Brazilian antitrust authorities of any potential anti-competitive conduct of which it may become aware.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

The most important change brought about by Law No. 12,529/2011 is that, effective from 29 May 2012, Brazil became a suspensory jurisdiction, under which transactions cannot be closed and the parties must remain independent from each other until final antitrust clearance is given in Brazil. Filing with the Brazilian antitrust authority shall be mandatory if at least one of the groups involved in the transaction had gross revenues in Brazil of at least 750 million reais in the preceding fiscal year and at least one of the other groups involved in the transaction had gross revenues in Brazil of at least 75 million reais in the preceding fiscal year.

As explained in question 31, CADE is divided into three divisions. The Superintendence is responsible for the initial review of merger cases and can issue final clearance in those cases that do not raise competition concerns. In the event the Superintendence concludes that a given transaction should be either blocked or approved subject to restrictions, it must oppose the case in the Administrative Tribunal.

Compared to other suspensory regimes around the world, the Brazilian premerger control regime does not allow the parties to close or implement the notified transaction immediately after the publication of the clearance decision: under Brazilian law, within 15 days counted from the publication of the clearance decision issued by the Superintendence, third parties and regulatory agencies are allowed to challenge the Superintendence's decision in the Administrative Tribunal. In addition, any members of the Tribunal can request that the case be subject to a complementary review by the Tribunal. For this reason, the parties are only allowed to close or implement the notified transaction once the 15-day period elapses.

There are two review procedures under the new regime: 'regular' and 'fast track'. The fast-track procedure applies to simple transactions, including, inter alia, transactions resulting in only minor horizontal or vertical overlaps and involving market shares below 20 per cent. The formal review period may take up to 240 days, and can be extended only once, for either an additional 60 or 90 days. During the first year of the new regime, in practice, cases filed under the fast-track procedure have generally been cleared by CADE in around 30 calendar days. Cases filed under the ordinary review process will take longer.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

The regulatory policy for oil activities is not affected by any treaties or multinational agreements. The core directives of the oil sector in Brazil are established under the Constitution. Multinational agreements or treaties entered by Brazil must not conflict with the provisions of the Constitution.

However, with a view to the avoidance of double taxation, Brazil has entered into tax treaties with the countries listed below. These treaties executed by Brazil and its partners usually follow the Model Tax Convention of the Organisation for Economic Co-operation and Development (OECD) even though Brazil is not an OECD member. Brazil has entered into treaties with Argentina, Austria, Belgium, Canada, Chile, China, the Czech Republic, Denmark, Ecuador, Finland, France, Holland, Hungary, India, Italy, Israel, Japan, Korea, Luxembourg, Mexico, Norway, Peru, the Philippines, Portugal, Slovakia, South Africa, Spain, Sweden and Ukraine.

Nevertheless, Brazil does not have significant bilateral investment agreements in force. As for tax information exchange agreements (TIEAs), Brazil has recently enacted Decree No. 8,003 of 15 May 2013 putting into force a TIEA entered into with the United States.

Finally, as mentioned in question 5, Brazil has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) through Decree 4,311/2002.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

There is no restriction on foreign participation in concessions, provided that the foreign investor incorporates a company under Brazilian law or acquires interest in a Brazilian company, and complies with all technical, legal and financial requirements established by the ANP. The direct or indirect acquisition of oil-related interest by foreign and local companies is subject to the approval of the ANP as described in question 25.

Further, all foreign or Brazilian companies are required to hire local personnel as employees, observing the requirement proportion of two-thirds of Brazilian employees and one-third of foreign employees in each branch. This proportion shall also be observed with respect to the payroll, meaning that the remuneration received by foreign employees shall observe the same proportionality related to the quantity of employees.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Crude oil and oil products are freely exportable in Brazil by companies duly incorporated under Brazilian law, as per article 60 of the Petroleum Law. Nevertheless, the export company must be registered before the ANP, in accordance with ANP Ordinance Rule No. 7/1999.

Such a registration must be requested by the operator on behalf of the consortia or by each party individually. For each oil cargo to be exported, the company shall send a letter to the ANP outlining that all the legal requirements established in the ANP Ordinance Rule No. 7/1999 have been fulfilled and the quantities and specifications of the hydrocarbons.

Further, the exportation of any goods, including oil and its by-products, must necessarily be recorded in the national integrated system for international commerce, SISCOMEX, which is an online instrument that enforces the government's control of external business by establishing a one-way flow of information, thereby eliminating parallel control in the operations.

In addition, requirements of the maritime authorities (ANTAQ and Capitania dos Portos), the tax authorities (the Secretariat of the Federal Revenue and the state tax secretariats) and the Central Bank (foreign exchange agreement registration) may also apply.

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Cameroon

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The Cameroon oil sector is mainly active offshore, more precisely in the Niger delta, south-west of the country close to the Nigeria border (and its huge petroleum fields). Many of the producing offshore fields are considered as being linked to the Nigerian producing offshore Niger delta fields. After 15 years of diplomatic discussions, in 2008 Nigeria returned the Bakassi peninsula (south-west of the country) to Cameroon, which is expected to be an important producing zone. Onshore potential is located around Douala, the economic capital and in the north-east sector of the country (Logone Birni basin).

The main producers of the country in 2014 were Perenco Cameroon and Exxon Cameroon. Victoria Oil and Gas (UK), through its wholly owned subsidiary Rodeo Development Limited, operates the Logbaba Gas and Condensate Field (Douala area). Bow Leven, Kosmos Energy and Addax Petroleum are also exploring.

A remarkable 25 per cent production increase in 2014 has put the overall production from 63,000 barrels per day to 82,000 barrels per day, ranking Cameroon 55th in world production. Estimated commercial reserves have been doubled to 400 million barrels, mainly as a consequence of the entry into production of new Niger delta fields and the Douala-Kribi-Campo basin. Oil, therefore, accounted in 2014 for 39 per cent of Cameroon's exports by value.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

The total Cameroon production increase is not yet reflected in the national consumption, as the new production has been wholly exported. Like most African countries, biomass (mainly wood) remains the primary energy source, representing 60 per cent of the total energy consumption in 2014, before petroleum (25 per cent), non-nuclear electricity (10 per cent) and gas (5 per cent).

Oil and gas production covers the national needs, but oil-refined products are sometimes unavailable, as the refinery capacity of the country is slightly in excess of its consumption requirements. Electricity production remains a huge problem. Production does not yet meet the national requirements and many sectors of the country are regularly shut down, with the consequence of the lack of available power and the unfitness of the distribution infrastructures. Improvement programmes have been implemented to support the economic growth, which remains dynamic.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

As oil production represents 20 per cent of the overall revenue of Cameroon while production has regularly decreased during the past 10 years, the government has adopted a policy that should encourage exploration and production. Among the modifications that have been adopted is the redistribution of the revenues from production.

4 Is there an official, publicly available register for licences and licensees?

A list of existing permits and concessions is available at the Cameroon Water and Energy Ministry. However, there is no direct internet access to the list of mining titles available from the Ministry for Mines and Energy. A list of titles is offered for sale on the site of Africa Oil and Gas (www.africa-oil-gas.com/cameroon_oil_and_gas_map_concessions_blocks_soft_edition-1450-1-2-c.html). The map updating is still awaited for 2015.

5 Describe the general legal system in your country.

The Cameroon legal system is a mix of French civil law and common law. Courts' jurisdiction is similar to the French system, with separate jurisdictions for commercial, civil and administrative disputes. The rule of law is generally upheld, though a wide discrepancy exists between regions of the country. Domestic and foreign decisions (including arbitration awards) can be easily executed. Cameroon is a member of the ICSID treaty for the settlement of disputes between states and foreign investors.

The principal law governing anti-corruption and anti-bribery is the Penal Code, which punishes a range of graft-related offences, including any offer destined to obtain a favour from a civil servant or refraining him or her from executing duties, misappropriation or embezzlement of public funds, for which the convicted faces a sentence of life imprisonment. Corruption, offering a bribe, favouritism or influence-peddling is punishable with sentences that range from one to 10 years' imprisonment and fines from 100,000 to 2 million francs.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The key law and regulations governing the upstream sector are the Petroleum Code, Decree No. 2000/465 of 30 June 2000 for the application of the Petroleum Code and Decree No. 2008/012 of 17 January 2008, amending and supplementing the regulation concerning the Cameroon National Hydrocarbons Company.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

There are no expropriation measures in force, except for the case where the title owner does not respect its obligations pursuant to the petroleum contracts that must be executed with the Cameroon National Hydrocarbons Company before delivery of the title (see question 10).

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

For the titles delivery and the operations follow-up, the Ministry acts through the direction for petroleum and gas products. The petroleum contracts are signed by the Cameroon National Hydrocarbons Company, created in 1980, which acts as the state representative for all development and monitoring of exploration and exploitation. Though it has no regulatory power, its involvement in the negotiation and the execution of petroleum contracts governing the activities makes it a key player in the country.

9 What government body maintains oil production, export and import statistics?

The Ministry of Industry, Mines and Technology and the Ministry of Finance maintain oil production, export and import statistics.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

Pursuant to the Petroleum Code, ownership of all and any reservoirs is to the benefit of the state of Cameroon. The mining titles provide the licensee with the right either to explore or produce, but ownership of the reserves remain with the state.

Exploration is open either to Cameroon nationals (artisanal limited titles) or to any person or company, whether Cameroon nationals or not, that prove they have the technical and financial capacity to explore, exploit and remediate sites in accordance with the law. A title gives to its owner an exclusive right over the reservoir that is distinct from the ownership of the surface area.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

As briefly indicated above, the main portion of the production for the past 16 years was offshore production (80 per cent of overall production). Governmental policy is encouraging the development of the south-west region (Niger delta, near the Nigerian boundary), which has proven to have important offshore reservoirs, and the north-east sector, where important discoveries have been made in the past three years by United Kingdom and Chinese companies.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

Oil exploration and production are regulated by the Ministry of Industry, Mines and Technology. Exploration is open either to Cameroon nationals (artisanal limited titles) or to any person or company, whether Cameroon nationals or not, that prove they have the technical and financial capacity to explore, exploit and remediate sites in accordance with the law. Three types of titles are delivered: survey authorisations (eg, for seismic), exploration permits and exploitation permits.

An exploration permit is furnished by the Ministry of Industry, Mines and Technology for three years and can be renewed twice for successive two-year periods. An exploration agreement must be executed with the mining administration, which will govern the work programmes.

An exploitation permit is delivered by Presidential Decree for 25 years and can be renewed for additional 10-year periods, until the end of the economic life of the field. A production-sharing contract must be signed with the administration.

A title demand can target any sector not exceeding 1,000km^2, except limited military zones or zones closer than 50 metres to constructions. Petitions are presented to the mining titles conservatory. A title gives an exclusive right to its owner over the reservoir that is distinct from the ownership of the surface.

The petitioner submits its title demand to the Ministry and must prove its technical and financial capacities of executing the mining work programmes and exploitation of the discoveries. Technical capacity will be recognised if the petitioner is sufficiently staffed with people competent for the execution of its obligations. Financial guarantees may be required for the delivery of the mining title. There must be at least one petroleum company involved in the demand. The delay between an application and the granting of the licence generally does not exceed six months. The negotiation of the petroleum contracts with the Cameroon National Hydrocarbons Company may prolong this by a delay of, usually, an additional two months. Apart from inhouse expenditures for preparing and presenting the file, there are no fees for petitions. However, a signature bonus will be asked for by the Cameroon National Hydrocarbons Company for the execution of the production-sharing agreement; the amount is fixed by negotiation.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The government participates in all licences through a production-sharing agreement. Such participation is determined through a partnership agreement that is executed between the Cameroon National Hydrocarbons Company and the licence petitioner when the title demand is examined by the administration. The amount of the share to be paid upon production shall be negotiated. There is no maximum participating interest, but it will generally vary between 20 and 40 per cent. The sharing is applied on amounts that are calculated after deduction of the portion of the revenues destined to cover operations costs, which is also negotiated through the production sharing agreement. Both the share and the operating costs amounts can consequently vary according to the level of production, and will be adjusted to take into consideration substantial changes in the economic situation. The administration does not participate in operations directly.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Once production is started, the title owner must pay two types of royalties: for onshore operations, the surface rights and the progressive royalty, and for offshore production, only the progressive royalty. Such royalties are determined by the production agreement that is executed with the administration. The progressive royalty shall be paid monthly either in cash or by delivery of a portion of the production, and generally amounts to 10 per cent, though the Cameroon National Hydrocarbons Company has indicated that it would increase its requirements. The surface rights vary from case to case, and are generally paid once a year.

Apart from the royalties, all producers shall also pay company tax (in 2013, representing 38.5 per cent of the benefits, plus 3.5 per cent for the local tax). A special 15 per cent tax is applied on foreign providers' agreements, consequent to the national preference measures in force, which imposes the stipulation of contracting with local companies and hiring Cameroon citizens.

Assignments of interests are subject to a tax of €350,000 (rounded).

15 What is the customary duration of oil leases, concessions or licences?

The customary duration is three years for exploration permits, renewable for two successive two-year periods and 25 years for exploitation permits, renewable for successive 10-year periods for the duration of the field life. New discoveries along existing reservoirs can lead to an extension of the existing title.

16 For offshore production, how far seaward does the regulatory regime extend?

The regulatory regime extends 200 miles from the shore (economic zone).

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

All onshore and offshore exploration and production are governed by the same rules.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Cameroon nationals can obtain artisanal exploration and exploitation permits (mainly for small-scale exploration and exploitation on their own property). Any company that proves it has the technical and financial capacity to explore, exploit and remediate sites in accordance with the law can obtain a title. It is an obligation to be incorporated locally and to be considered as a petroleum company, the status of which will be recognised if technical and financial capacities are evidenced as indicated above. The time period for incorporating a new company is usually four weeks, for a cost not exceeding €1,000.

19 What is the legal regime for joint ventures?

Joint venture regulation is left to the contractual determination by the co-owners, which will be linked with the administration by the work programmes' engagements and the production sharing agreement.

The administration obtains a regulatory 10 per cent participation in any mining company, which cannot be reduced in the case of the issuance of new shares.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Domestic reservoir unitisation will be subject to a specific agreement to be negotiated with the mining administration. There are no pre-established rules governing cross-border reservoir unitisation; frequently, countries disputing such a boundary litigate the delimitation of such boundary based on the United Nations Convention on the Law of the Sea of 10 December 1982 in the International Court of Justice (if such a boundary is found offshore), or enter a joint development agreement that covers a broad geographic territory proximate to the disputed boundary (Cameroon and Chad entered such an agreement in 2010 for the Cameroon northern cross-boundaries basins).

21 Is there any limit on a party's liability under a licence, contract or concession?

There is no limit concerning the liability of a party owning a licence regarding the remediation of sites. A guarantee must be issued in favour of the administration, upon delivery of the title, by the shareholders of the licensee. The liability is joint and several between the licensee and its shareholders as a consequence of such a guarantee.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

A parental guarantee is the most common requirement for licence deliveries. Additional guarantees, including security deposits, may be required in exceptional situations, but in principle the parental guarantee will suffice. When required, parental guarantees must be delivered by each and every parent company from the immediate controlling company to the ultimate indirect control holding. The guarantee covers all and any liability assumed by the licensee for the damages caused by its operations or the costs for site remediation.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

The petroleum contracts determine the scope of the preference that are afforded to local companies and employees. Apart from the contract, the Petroleum Code imposes on the licensee and its contractors the duty to give preference to Cameroon providers, provided they offer competitive conditions. Priority must also be granted to local workers. Operators must implement and finance programmes to develop Cameroon-qualified manpower.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

See question 23.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Approval from the Ministry of Industry, Mines and Technology is required for title transfer. The government benefits from a pre-emption right on any assignment project. It also benefits from a pre-emptive right on any title in cases of transfer, but, in practice, prefers to remain in a minority participation throughout the joint venture. The timetable for a transfer authorisation varies between 12 and 24 months.

A transfer tax of €350,000 (rounded) is now levied on any assignment.

26 Is government consent required for a change of operator?

Government authorisation is required for a change of operator. The new operator must prove its technical capacity. The title demand is submitted to the Water and Mines Ministry. The timetable for the authorisation, assuming the technical capacity is agreed, shall not exceed three months.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

As stated above, a transfer tax of €350,000 (rounded) is now levied on any assignment.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The obligations of the operator will be stipulated in the operating agreement that will be executed with the administration. Generally, the operator shall decommission and restore sites to their original status, but special dispositions can be established that will leave the ownership of the sites in the hands of the state. Pipelines are decommissioned by the usual cleaning and inerting measures.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

There is no obligation to provide financial guarantees for decommissioning liabilities.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

There is no specific regulation for road transportation, which is governed by general transportation laws. Pipeline transportation is governed and controlled by the Ministry for Planning.

The Ministry for Transport governs road transportation of products. Maritime transportation is governed by the unified code for maritime transportation that applies to Cameroon, the Central African Republic, Chad, Congo, Equatorial Guinea and Gabon. It enacts dispositions substantially in accordance with the international petroleum vessel transportation treaties.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

Apart from the construction and exploitation permits that are required for a pipeline, there are no specific requirements.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Only a few provisions of the Mining Code apply to environmental protection. It imposes the obligation to avoid pollution and exploit in such a way as not to alter the environment or expose humans or wildlife to hazards resulting from such exploitation. Waste shall be treated in accordance with pre-established authorisations from the administration.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

Not applicable.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

General labour law requirements apply to the oil industry. In order to be allowed to enter the territory, foreign nationals are required to obtain a visa from their country's embassy or consulate. There are no specific anti- discrimination provisions.

Under the Mining Code, penalties for non-compliance are fines ranging between €150 and €3,000; in some special circumstances (eg, injury or death), prison sentences may be imposed that last between several days and six months.

In addition, priority shall be granted to local workers. Operators shall implement and finance formation programmes to develop Cameroon qualified manpower.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Apart from VAT (19.25 per cent), the owner of an exploration permit benefits from a total exemption from all taxes and royalties until the discovery proves to be commercial.

Once production is engaged in, the title owner shall pay the current VAT (with, however, an exemption on materials that are imported for exploitation and for production that is exported) and company taxes (the normal rate is 38.5 per cent of the yearly benefits, with a minimum charge of 1.1 per cent of the yearly revenue, but the company tax can rise to 50 per cent; its rate is determined by the production agreement that is executed with the administration).

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Prices have been freely fixed since 1999, but the National Crude Prices Commission provides public subsidies to maintain prices at an acceptable level for domestic consumption.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Antitrust Law (1998) applies to all sectors of activity, including oil market activities, and prohibits any action or agreement that may affect free competition. The National Competition Commission is mandated to apply the law.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

A petition has to be submitted in writing to the National Competition Commission to obtain approval of an agreement that may infringe the country's antitrust measures; the agreement will be examined and a decision rendered in a time frame generally varying between three and six months.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Not applicable.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

A local subsidiary shall be created to own the mining title and sign the petroleum contracts with the Cameroon National Hydrocarbons Company.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

CEMAC customs tariffs will be applied for the exit of production from Cameroon to neighbouring countries, as Cameroon is not a member of the ECOWAS free trade agreement. However, residual exports are mainly shipped by boat.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

In the past year, Croatia produced 599,900 MT and imported 2.325 million metric tonnes of crude oil. No exports were reported.

The INA group, as the biggest oil and gas company in Croatia, produces, refines and imports most of the oil and oil products in Croatia. INA is a joint stock company listed on the Zagreb Stock Exchange in approximately 49 per cent ownership of MOL, the Hungarian oil and gas group, and approximately 47 per cent in the hands of the Croatian government.

Crude oil is produced from 33 onshore oil fields operated and licensed to INA dd. According to INA's records, production amounts to 2.2 barrels of oil equivalent (BOE) per day and reserves are estimated at 184 million BOE.

There is no offshore production of oil in Croatia. However, on 10 July 2014 the government announced the first onshore licensing round for licences for the exploration and production of hydrocarbons in the Adriatic (Tender). Transportation of oil in pipelines is a regulated energy activity carried out by Jadranski Naftovod dd (Janaf), a joint-stock company 65 per cent directly and indirectly (through national investment funds) owned by the government of Croatia and 15 per cent owned by INA. The company operates the Croatian portion of the the former Yugoslav oil pipeline that runs from the port oil terminal Omisalj (north-west Croatia) with two branches, one leading to Lendava (Slovenia) and Gola (on the Croatian-Hungarian border) and the second leading to Sotin (on the Croatian-Serbian border) a total of 622km. Janaf holds a licence from the Croatian Energy Regulatory Agency (HERA) for the transport of oil in Croatia.

INA operates two oil refineries. One is Rijeka (one of Europe's oldest oil refineries, with its first production in 1887 when 60 tonnes of lubricant oil were produced) and the second in Sisak.

Rijeka processes 2.6 to 3 million tonnes of oil per year while Sisak processes 2 to 2.2 million tonnes of oil per year.

In HERA's licence registry there are 40 entities registered to hold licences for the wholesale trade of oil in Croatia.

According to article 9 of the Oil Market Act the price of oil is marked set.

In 2013 there were approximately 800 petrol stations in Croatia of which more than 50 per cent were owned by INA.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

With a population of 4.3 million and a GDP of approximately US$60 billion, Croatia imports over 50 per cent of its total energy needs. Approximately 40 per cent of its energy needs are met by oil products, out of which approximately 20 per cent are produced in domestic exploitation fields.

In 2012, of the total amount of oil, 61,300 tonnes was used for thermo power plants, while 525,000 tonnes was processed by refineries.

Croatia's economy has been in recession over the past six years (in 2008 an increase of 2.2 per cent in GDP was recorded). This year Croatia is expected to report a minimal decrease in GDP. In 2012, GDP decreased by approximately 2 per cent, which in turn meant a decrease of total energy supply of 4.7 per cent. Oil production in 2012 decreased 9.7 per cent, while the average decrease since 2007 amounted to 7.1 per cent per annum. Oil imports decreased in 2012 by 18 per cent while the average decrease since 2007 amounts to 12 per cent.

Economic forecasts for Croatia expect a slow recovery with possible GDP growth for 2015. Oil demand and supply is closely related to the economic situation.

The possible discovery of oil in the Adriatic and continental Croatia may change the downward trends.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

In 2009, the Croatian government adopted the Strategy of Energy Development (Official Gazette No. 130/09) (the Strategy). The Strategy describes the goals and means for the entire energy sector from 2009 until 2020.

For oil, the goal of the Strategy sets out the principle guidelines as efficient consumption of oil and oil products, modernisation of the refineries, ensuring new exploration and introducing new technologies to existing exploitation, securing new supply, construction of storage facilities and creating an investor-favourable legal framework.

4 Is there an official, publicly available register for licences and licensees?

HERA's website holds the register of licences and licensees. It is freely accessible.

5 Describe the general legal system in your country.

Croatia is a civil law jurisdiction, the main principle being the independence and check and balances system between the judiciary, executive and legislative branch. Independence and impartiality of the judiciary branch is prescribed by article 29 of the Constitution. Croatia is also member of the European Convention of Human Rights and a member of the European Union. After a first five-year period, judges are nominated until retirement or disciplinary breach, which ensures their independence.

The rule of law is upheld. The courts have competency in enforcement proceedings, while the Commercial Court of Zagreb is the forum for the enforcement of foreign arbitral awards. Croatia is also a party to the New York Arbitration Convention. From a case-to-case basis enforcement may be prolonged but otherwise is standard.

Croatia has incorporated Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing into the respective national act.

The Republic of Croatia continuously strategically reflects, implements and builds its system of anti-corruption measures. On 27 February 2015, Parliament adopted an anti-corruption strategy for the period from 2015 to 2020. The strategy is focused on the prevention of corruption through detection of corruption risks and removing the remaining legislative and institutional deficiencies. The strategy also promotes integrity and transparency in the acts of the state bodies and institutions, putting the emphasis on the responsibility of persons holding public office.

Given that Croatia is a full member of the European Union, very important anti-corruption activities are undertaken by national authorities

(Ministry of Finance, the State Attorney's Office, Ministry of Interior, etc) that collaborate with the European Commission Anti-Fraud Office (OLAF) through which the coordination of legislative, administrative and operational activities are performed in order to protect the financial interests of the European Union.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The energy market is regulated by the Energy Market Act (Official Gazette 120/12, 14/14) as a general act while the oil and oil derivatives market is regulated by the new Oil and Oil Derivatives Market Act (Official Gazette No. 19/2014) (Oil Market Act). The Oil Market Act provides 12 activities including production of oil derivatives, transport (pipelines, road, rail or sea), trade (wholesale and retail, including LPG) and storage of oil and oil derivatives (including LPG).

The Croatian Energy Regulatory Agency awards licences to energy undertakings for the performance of energy activities in the oil market.

Energy activities are regulated by the Energy Act and Oil Market Act.

Oil and Gas exploration and production is not an energy activity. The main act regulating the exploration and production is the Exploration and Exploitation Act (Official Gazette No. 94/13, 14/14) (the Exploration Act).

According to article 2/2, the Exploration Act has precedence over other acts including the Mining Act (Official Gazette No. 56/13, 14/14) and Construction Act (Official Gazette 153/13) that regulate mining and construction works respectively.

Additional implementing regulations are the Decree On Fees for Exploration and Exploitation of Hydrocarbons (Fee Decree) and the Decree on the Main Technical Requirements for Safety and Security of Offshore Exploration and Production of Hydrocarbons in the Republic of Croatia (Offshore Safety and Security Decree).

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

The Energy Act (article 18) provides that energy licences may be revoked by HERA if the energy undertaking:

- suffers the loss of the energy activity registration in the Croatian Companies' register;
- does not fulfil the technical requirements;
- does not have the required number and qualification of professional personnel;
- does not meet the financial requirements;
- does not execute the energy activity according to the energy legal framework; or
- does not honour its financial commitments to other public energy undertakings for more than three months.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The Ministry of Economy (Energy and Mining Departments) is the main governmental body. It drafts and proposes energy regulation, collects data and releases reports, and announces and executes tenders. Its inspectorate section is the main body that monitors the undertaking's act according to the law.

HERA is the main independent energy agency that supervises the energy sector, awards licences for energy activities and collects and processes data of energy undertakings.

HANDA is the Croatian Compulsory Oil Stocks Agency, an autonomous, independent and non-profit public institution responsible for establishing compulsory stocks in the quantity of 90 days' average daily consumption.

The Croatian Hydrocarbons Agency acts as operational support in exploration and exploitation of hydrocarbons to competent bodies, organises activities related to tender procedure and issuance of exploration and exploitation licences, monitors the fulfilment of contractual obligations, controls investor's expenses and reports to the European Commission.

9 What government body maintains oil production, export and import statistics?

The Energy Act (article 9) prescribes the obligation of the government to ascertain long-term and yearly energy balances. In order to do so, energy undertakings must provide yearly data reports to the Ministry of Economy as per the Ordinance of Energy Balance (Official Gazette 33/2013).

Additionally, one of the activities of HERA is the collection and processing of data related to the energy undertakings. The agency publishes yearly reports in which production, export and import statistics are presented.

Article 29 of the Hydrocarbons Act obliges the inspectorate division of the Ministry of Energy, Department of Mining to supervise the recorded amounts of exploited hydrocarbons.

Article 41 of the Hydrocarbons Act sets out that all geological and other data that is collected in the performance of an exploration and exploitation licence is the exclusive property of the Republic of Croatia.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

According to article 52 of the Croatian Constitution and article 5/1 of the Mining Act, mineral resources are goods of interest to the Republic of Croatia.

Article 5/2 provides that the mineral resources, including hydrocarbons, are owned by the Republic of Croatia.

Article 5 of the Hydrocarbons Act further regulates title with regard to hydrocarbons. In article 5/2 it is explicitly regulated that land ownership does not include the ownership of hydrocarbons and the right to mining works. The Republic of Croatia has the exclusive right to the exploration and exploitation of oil and gas and the right to assign this right to third parties. Third parties may acquire ownership only of produced hydrocarbons as regulated in the production sharing agreement or any other type of agreement (the Hydrocarbons Act provides the possibility of three agreements: PSA, royalty or mixed type).

There is no distinction between surface and subsurface mineral rights.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Existing production of oil is only onshore and it covers 20 per cent of the annual needs of Croatia.

There is no particular provision defining off-limits areas for the exploration and exploitation, however, each tender round includes limitations and obligations to take into consideration (ie, international shipping lanes, restrictions and protected areas such as tourist zones, archaeological zones, fishing zones and others) as well as recommendations of competent governmental bodies that set the off-limits areas.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The Hydrocarbons Act prescribes a specific bidding procedure for the award of an exploration and exploitation licence.

The tendering process is divided into two parts, the pre-tender (articles 12 to 14) and the tender procedure (articles 15 and 16).

Pre-tendering

Pre-tendering follows a number of stages as listed below:

- the Agency proposes to the Ministry of Economy to undertake the Procedure for Licence Issuance (article 6/2/b);
- thirty days before the announcement of the tender, the government must request special conditions, restrictions and consent from local and regional governmental bodies (article 12/1);
- the nomination of the expert committee on the public tendering procedure (article 12/3); and
- the expert committee shall prepare the tendering conditions, feasibility study, assess the licence value, tendering documentation, determine the amount of bid security, fee for the tendering documentation, define the blocks and determine the agreement type and criteria of selection of preferred bidder (article 14/2).

Tendering procedure

The tendering procedure has the following stages:

- a decision on the contents and conditions of the public tendering procedure and criteria for selection of the preferred bidder (article 15/4);
- a decision on the procedure for licence issuance (article 15/1);
- announcement of the tender on the Ministry website and EU Official Gazette (article 15/2 and 3);
- six months duration of the tender (articles 15/3 and 16/4); and
- a decision on the preferred bidder two months after the expiry of the tender (article 16/5).

The costs are not pre-set and may vary depending on the bid round.

For the tender announced by the government on 10 July 2014 the application fee amounts to €5,000 (article 3/2/1).

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

When an investor is awarded a licence he or she is obliged to sign an agreement with the government of Croatia. Article 22 of the Hydrocarbons Act provides three possible agreements: the production sharing agreement, a tax and royalty agreement or a mixture of the two.

Participation of the government in a licence and production sharing agreement is set by the Ordinance on Hydrocarbons Exploration and Exploitation Fee. Article 9 provides as follows:

- the percentage of produced quantity of hydrocarbons shall be calculated by means of R-factor (R) for every quarter;
- R shall be calculated in the following way:
  - R = X/Y where X is the amount of the achieved cumulative net revenue of the investor on the basis of the produced quantities of hydrocarbons pursuant to the licence issued and the agreement concluded between the government and the investor in the previous quarter; and
  - Y is the amount of cumulative capital expenditure on the basis of the produced quantities of hydrocarbons pursuant to the licence issued and the agreement concluded between the government and the investor in the previous quarter;
- net revenue represents the total amount of money that the investor has earned, including the cost recovery, as well as its part of the revenue from the share of the quantity of produced hydrocarbons pursuant to the licence issued and the concluded agreement, decreased for operating costs; and
- cumulative capital expenditure represents all development expenses and production expenses pursuant to the licence issued and the concluded agreement;

The percentage of the share of quantities of the produced hydrocarbons to which the investor is entitled from the first day of production shall be equal to the percentage of the value of R.

The percentage value of R to which the investor is entitled is as follows:

- $0 < R < 1.0$ – 90 per cent;
- $1.0 < R < 1.5$ – 80 per cent;
- $1.5 < R < 2.0$ – 70 per cent; and
- $R > 2.0$ – 60 per cent.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

According to the Ordinance on Hydrocarbons Exploration and Exploitation Fee the royalties are divided and defined as follows:

- exploration area fee (400 kuna/km^2);
- exploitation area fee (400 kuna/km^2);
- contract fee (minimum 1.4 million kuna and is one of the criteria for the preferred bidder);
- acquired hydrocarbons fee (10 per cent of market value of the acquired hydrocarbons) – quartile;
- additional exploitation fee (for oil: 1.4 million kuna at the beginning of the exploitation, plus the same amount every 50,000 barrels, up to 200,000 barrels and for gas 900,000 kuna at the beginning of the exploitation, plus the same amount every 25,000 BOE, up to 100,000 BOE); and
- an administrative fee (600,000 kuna at a 4 per cent yearly increase) – yearly.

There is no distinction between offshore and onshore royalties.

Both the Hydrocarbons Act (article 40) and the draft PSA agreements attached to both tenders (onshore and offshore) hold a general stabilisation clause according to which if there are changes in legislation, both parties shall begin negotiations for changes and amendments to the agreement in order to achieve a balance of interests and the same planned economic result that was existing when the agreement was first signed (article 29).

15 What is the customary duration of oil leases, concessions or licences?

Article 19 of the Hydrocarbons Act provides that a licence may be issued for a maximum of 30 years. The licence duration is divided into expiration periods that last five years with a possibility of extension for two periods of six months.

16 For offshore production, how far seaward does the regulatory regime extend?

Offshore exploration and exploitation on the continental shelf of the Adriatic extends to the demarcation line with the neighbouring countries (article 1 of the Hydrocarbons Act).

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

There is no difference between the offshore and onshore regimes. Differences may occur in the terms of the different tenders.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

The Hydrocarbons Act defines 'petroleum company' (article 4/1/27) as any legal entity with its seat or subsidiary in the Republic of Croatia, registered with the competent body to conduct hydrocarbon exploration and production and a legal entity with its seat in one of the EU member states, registered with a competent body of an EU member state to conduct the exploration and production of hydrocarbons.

The competent body that allows a company to carry out exploration and exploitation in Croatia is the Ministry of Economy, Department of Mining.

There are no explicit registration requirements, criteria or procedures. Entities must obey the general security at work requirements and mining requirements set by the Mining Act and Safety and Security Decree.

Although there is no obligation of corporate presence in the Hydrocarbons Act for companies with a seat in an EU member state, current practice provides that an office should be open during the duration of the agreement.

19 What is the legal regime for joint ventures?

Joint ventures within the oil sector are not specifically regulated under Croatian law. Licences for exploration and production of oil can be granted to one or more entities, meaning that joint ventures are allowed (both corporate and contractual).

In the case of a joint venture, each member has joint and several liability for the obligations arising from licences and agreements on oil exploration and exploitation. One member of the joint venture is nominated as the operating company, responsible for dealing with the authorities and third parties.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

There are no provisions regulating unitisation of domestic and cross-border reservoirs.

Cross-border reservoirs exploitation is regulated through bilateral governmental agreements either with a single agreement (eg, Hungary) or several agreements for each field (eg, Italy).

The draft PSA attached to the tender documentation (both on and offshore) provides in article 8 that where a reservoir extends over other exploration areas the government may require that the two licensees collaborate in the joint development of the reservoir and sign a unit development agreement.

21 Is there any limit on a party's liability under a licence, contract or concession?

Article 33 of the Hydrocarbons Act provides for the liability of licensees for any mining activities.

Any third party involved is jointly and severally liable.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Under the Hydrocarbons Act, a bid guarantee is required for application to tender for exploration and exploitation of hydrocarbons. Further, bank guarantees or security deposits are required for rehabilitation of the exploration area or exploitation field.

Pursuant to the tender documents, parental guarantees are not required but a bid guarantee in the form of a first-class bank guarantee is required. According to the draft PSA, on-demand bank guarantees are required for minimum work performance in several phases.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

Such a requirement is not prescribed by Croatian law. However, use of locally sourced goods, services and capital is encouraged through various government incentives for investments in the Croatian economy. Although not specifically required by law, the preference of employment of Croatian personnel and use of Croatian goods, material and services is expected to be negotiated by the government in agreements with investors in exploration and exploitation of oil.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

Pursuant to the Croatian Hydrocarbon Exploration and Exploitation Act, licences for exploration and exploitation can be granted only to petroleum companies having a seat or a subsidiary in Croatia, and registered with the competent body to conduct hydrocarbon exploration and production, and to a legal entity with its seat in one of the EU member states, registered with the competent body of the an EU member state to conduct the exploration and production of hydrocarbons. Petroleum companies also have an obligation to comply with Croatian environmental, historical and cultural regulations, pay the taxes, file annual reports regarding their obligations according to the licence or PSA to the competent Ministry and Agency, etc (article 32 of the Croatian Hydrocarbon Exploration and Exploitation Act).

Another local content requirement that applies to companies operating in Croatia is regulated by the provisions of the Foreigners Act stating that foreign nationals may work if they have been granted a work and residence permit or a work certificate issued by the Ministry of Internal Affairs, and certain categories of workers may work without the above-mentioned permit and certificate if they fulfil other requirements provided by the Act. A minimum amount of local labour is only prescribed for obtainment of work and residence permits for foreign nationals working in a company either as key personnel or as self-employed in a company they have incorporated.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

The government's consent is required for a company to transfer its interest in a licence, concession or production sharing agreement. The consent is not required if the transfer is made to an associated company. The transfer can be made only with respect to a company that meets all the requirements for the licence and agreement award pursuant to provisions of the Hydrocarbons Act.

Change of control does not require similar approval, except if otherwise not agreed between the government and investor.

The investor must immediately notify the Ministry of Economy of its intention to transfer its interest and file a request for approval. The Ministry should render a decision within 30 days of receipt of such a request. Approval is issued by the government, following the Ministry's proposal.

The government has a pre-emptive right through its state-owned company. The pre-emptive right is also reserved for any other company nominated by the government that meets all prescribed requirements for licence and agreement award. The minimum share in rights and obligations from the licence and agreements acquired by the government or company nominated by the government cannot be less than 10 per cent.

26 Is government consent required for a change of operator?

The government's consent for a change of operator is not explicitly prescribed by law but is left to be agreed between the state and investor in the agreement on oil exploration and exploitation.

Croatia announced two tenders for licences for hydrocarbon exploration and production: one in April 2014 and the second one in July 2014. Pursuant to the tender documents, the government's consent is required for change of operator.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

There are no specific fees or taxes arising from a transfer of interests of a licence, however, there will be administrative costs determined by the government and paid by the investor holding the licence.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

According to article 22/5/15 of the Hydrocarbons Act, decommission obligations are an obligatory clause of the agreement.

The draft PSA attached to the tender holds a decommissioning clause, according to which the investor must provide a detailed decommissioning plan (a technical and engineering description of decommission, removal and disposal of facilities and installations and site clean-up and restoration, in addition to the expenditures).

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

According to the agreement, a decommissioning fund should be established with agreed payments starting one year from the first commercial production, with the mutual intent that the decommission will be covered by the Decommissioning Fund either at the end of production or agreement. Any amount not covered by the Decommissioning Fund should be paid by the investor and any excess funds are to be transferred to the government.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Article 15/2 of the Energy Act differentiates between five types of oil transport energy activities: pipeline, product pipeline, by road, by rail and by sea.

Pipeline transport is regulated and monitored by the Ministry of Energy, while road, rail and maritime transport is in the authority of the Ministry of Maritime Affairs, Transport and Infrastructure. In order to obtain a transport energy activity licence, energy undertakings must produce evidence that they meet the technical, personnel and financial requirements prescribed in the implementing regulations.

The main national legislation regulating maritime transport is the Maritime Code (Official Gazette Nos. 76/07, 146/08, 56/13, 26/15), while other means of transport are regulated by the Transport of Dangerous Goods Act (Official Gazette No. 79/07).

Pipeline transport with neighbouring countries is regulated by a set of bilateral treaties.

Cross-border transport is regulated by international conventions. For maritime transport Croatia is a member of the Barcelona Convention, the CLC Convention (1992 Protocol) and Fund Convention (2003 Protocol).

With regard to road transportation, the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) applies.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

The Ordinance on the Licences for the Performance of Energy Activities (Official Gazette Nos. 118/07 and 107/09) regulates the requirements for the award of an energy activity licence. The requirements are divided into three groups: technical, professional and financial.

According to article 4/1/1 of the Transport of Dangerous Goods Act, oil products are defined as dangerous goods due to their flammable nature but in line with the definitions of the ADR.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

The main regulating act for safety at work is the Occupational Health and Safety Act (Official Gazette Nos. 71/14, 118/14 and 154/14). The Act regulates prevention of work-related injuries, professional diseases and other work-related diseases and safety of the work environment. The Labour Act (Official Gazette Nos. 93/14) provides an obligation for the employer regarding necessary documentation (on maintenance of facilities, equipment, workplace and access to the workplace) and an obligation for the employer to organise work in a safe manner that guarantees the safety (of both health and life) of the worker. The Ministry of Labour and Pension System is the governmental body responsible for the regulation of health and safety at work and for the inspection of compliance with legal provisions. In the case of non-compliance, different administrative and penalty measures may be enforced. The Mining Act (Official Gazette Nos. 56/13 and 14/14) regulates work at facilities for exploration and exploitation of oil and natural gas and prescribes special safety measures. Inspection of compliance with the regulations of the Mining Act is conducted by inspection by the Ministry of Economy and in the case of non-compliance, measures prescribed by the Mining Act may be enforced (eg, a work ban).

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

No specific requirements other than those mentioned in question 32.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Oil industry labour is regulated mainly by the Labour Act and also other regulations, ordinances and internal rules of each employer that are in compliance with the Labour Act, which regulate rights and obligations concerning work-related issues. The Mining Act and the Rules on Qualifications for Conducting Certain Work Tasks in Mining (Official Gazette No. 9/2000) prescribe certain requirements such as an education degree, work experience and other qualifications that are required for the performance of certain tasks.

Foreign labour is regulated by the Foreigners Act (Official Gazette Nos. 130/11 and 74/13) and the Rules on the Status and Work of Foreigners (Official Gazette Nos. 52/12 and 81/13) as well as separate rules that regulate the work of foreign nationals from EU countries.

The provisions of the Foreigners Act regarding entering, residence and work of foreign nationals in Croatia is highly complex and differs depending on the type of work, work position and duration of work they intend to perform in Croatia (eg, seasonal work, permanent work, etc). Foreign nationals may work if they have been granted a work and residence permit or a work certificate issued by the Ministry of Internal Affairs, and certain categories of workers may work without the above-mentioned permit and certificate if they fulfil other requirements provided by the Act. A minimum amount of local labour is only prescribed for obtainment of work and residence permits for foreign nationals working in a company either as key personnel or as self-employed in a company they have incorporated.

Anti-discrimination provisions are set out in the Act on Discrimination Prevention (Official Gazette Nos. 85/08 and 112/12), which also provides legal remedies and enforcement authorisations and penalties where there is violation of its provisions (fines of up to 40,000 kuna for the perpetrator, up to 250,000 kuna for crafts people or other self-employed persons and up to 350,000 kuna for legal entities).

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

There is no specific tax regime applicable for the oil industry but general taxes apply – corporate income tax, personal income tax, VAT, withholding tax, etc. There is no additional profit tax charged for income arising from activities in the oil industry.

The corporate income tax in 2015 amounted to 20 per cent and personal income tax amounted to 12, 25 or 40 per cent depending of the amount of total income.

Croatia is a party to a number of bilateral agreements on avoidance of double taxation.

The tax administration with the Ministry of Finance is responsible for implementation and enforcement of tax regulations.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Trade of crude oil is a market activity as well as a trade of oil products.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Croatian Competition Agency has the authority to prevent and punish anti-competitive practices under the Croatian Competition Act (Official Gazette No. 79/09, 80/13).

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

Joint ventures or mergers above a certain financial threshold must be notified to the Croatian Competition Agency (CCA) for assessment. The notification should be submitted to the CCA prior to its implementation, namely, upon conclusion of the contract that forms the basis of a joint venture or a merger but before its implementation.

If the CCA does not issue an order on initiation of the assessment proceedings within 30 days following the receipt of the complete notification of merger, the merger shall be deemed compatible. Upon request, the CCA issues a certificate confirming that the merger is allowed.

Update and trends

The Croatian government granted 10 licences for exploration and exploitation of hydrocarbons in the Adriatic. These decisions were preceded by the first licence round for the exploration and exploitation of hydrocarbons in the Adriatic, which was concluded on 3 November 2014.

Bids were received from six companies and for 15 exploration areas. Bids for 10 exploration areas were positively evaluated and, therefore, 10 licences were awarded to Marathon Oil, OMV, ENI, MEDOILGAS and INA which gained the right to explore and exploit hydrocarbons in the Adriatic.

This government decision raised a lot of attention from the Croatian public (a referendum was mentioned as well, although not officially), which is divided over exploration and exploitation of hydrocarbons in the Adriatic for ecological reasons.

On 18 July 2014, the government announced the first onshore licensing round for licences for the exploration and production of hydrocarbons. The area subject to the licensing round consisted of six exploration blocks, and the submission deadline was 18 February 2015. There were seven applicants. The licences have not been granted yet but are expected in due course.

The positive effects of this new investment cycle in the energy sector, as well as various others set out in the Energy Development Strategy, make Croatia a valuable partner to the European energy sector. As per statements of the Minister of Economy, Ivan Vrdoljak, Croatia will become an 'energy hub', which would be a significant positive impact on the growth of the domestic economy.

The oil refinery in Sisak which was temporary shut down from 14 January 2015 has started to work again, and it is expected that processing of oil will last until the end of May, ie until all supplies of domestic oil that are stored in Sisak are processed.

The oil company OMW has forsaken retail of oil by selling its petrol stations to the local downstream oil company Crodux.

On the other hand, if it finds that the merger could significantly impede effective competition in the market, the CCA issues an order on initiation of the assessment proceedings and brings a final decision within three months from the initiation of the mentioned proceedings.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

According to article 140 of the Croatian Constitution, international treaties or other multinational agreements are directly applicable over national legislation. Since Croatia is a member of the EU any regulatory obligations imposed by the EU apply to Croatia as well.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Pursuant to the Croatian Hydrocarbon Exploration and Exploitation Act, licences for exploration and exploitation can be granted only to petroleum companies having a seat or a subsidiary in Croatia, and registered with the competent body to conduct hydrocarbon exploration and production and a legal entity with its seat in one of the EU member states, registered with the competent body of the an EU member state to conduct the exploration and production of hydrocarbons.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

There are no special rules that apply to cross-border sales or deliveries.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The Kingdom of Denmark comprises the territories of Denmark, the Faroe Islands and Greenland. Since the mid-1980s, domestic oil production and exploration activity in Denmark and in the other parts of the Danish Kingdom (Greenland and the Faroe Islands) has increased dramatically. In 2014, one new licence for exploration and exploitation was granted. No licensing rounds will be held in 2015. With the new licence the total number is 23. In June 2013, the Faroese government granted two licences under the fourth Faroese licensing round. In 2014, four licences were relinquished in the Faroe Islands, and three licences are in force as of January 2015. So far, drilling operations in Greenland and Faroe Islands have not led to initiating any exploration (production) activities. This chapter, however, concentrates solely on the oil regulation of the Danish mainland and the continental shelf belonging to it. See the chapters on the Faroe Islands and Greenland for details on the other countries of the Danish Kingdom.

In January 2014, the sum of reserves and contingent resources of oil was calculated at 167 million cubic metres corresponding to 16 years of oil production with activity at the 2013 level. Denmark is the third largest oil producer in western Europe trailing only Norway and the United Kingdom.

All producing fields in Denmark are located offshore in the Danish sector of the North Sea. In total there are 19 oil and gas fields of varying size (11 oil and two gas and six mixed fields). In Denmark, the area 6° 15’ eastern longitude (the Central Graben area and adjacent area) is generally offered for licensing in licensing rounds, while the rest of the Danish licensing area is offered for licensing under the open-door procedure. In 2014, one onshore open-door licence covering an area in the southern part of Jutland was awarded.

Since 1983, seven licensing rounds for hydrocarbon licences in the North Sea have been held, the latest in 2006 and 2014. Applications under the seventh licensing round are still being processed. The Danish Energy Agency (DEA) has announced that the licensing rounds following the seventh round will be held at about one-year intervals between rounds. In 1997, the open-door procedure was introduced. The open-door procedure covers all non-licensed areas east of 6° 15’ eastern longitude. So far, no commercial oil or gas discoveries have been made in the open-door area.

The Dan and Halfdan fields represent 60.8 per cent of the total domestic production (2013). In 2013, a total of 10,2 million cubic metres was produced from the 19 fields. The main part was supplied to the partially state-owned company, Dansk Olie og Naturgas A/S (DONG; in this chapter, any company belonging to the group is also referred to as DONG). In 2013, 89 per cent of all domestic oil production was carried out by a joint venture, Danish Underground Consortium (DUC), consisting of AP Moeller-Maersk (31.2 per cent ownership interest), Shell (36.8 per cent ownership interest) and Chevron (12 per cent ownership interest) pursuant to the sole concession granted to AP Moeller in 1962. Since July 2012, the Danish state has had a 20 per cent ownership in DUC, which is owned through the Danish North Sea Fund (Nordsøfonden).

There is one oil pipeline from the North Sea to the onshore processing facilities on the Danish peninsula, Jutland. This pipeline is owned and operated by DONG. A connection between the Norwegian, Swedish and Danish pipeline network, called the Skanled pipeline, has been put on hold for the time being.

Denmark has been energy self-sufficient since 1997 and self-sufficient in oil since 1993. In 2013, the degree of self-sufficiency in oil was 134 per cent. The degree of self-sufficiency in oil peaked in 2004 and has been falling over the past nine years.

2 What percentage of your country’s energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country’s energy demand and supply trends, especially as they affect crude oil usage?

36.6 per cent of Denmark’s total energy needs are met directly or indirectly by oil. 24.6 per cent are covered by renewable energy (figures for 2013). The major part of the supply was covered by domestically produced oil and Denmark is expected to be a net exporter of oil until 2021.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The overall strategy of the policies regarding oil-related activities is to provide for appropriate use and exploitation of the Danish subsoil and its natural resources. In 2012, Parliament agreed on an energy plan outlining goals for Denmark’s energy supply and efficiency. The overall goal is to increase the share of renewable energy in the energy supply. Further, the goal is to become independent of coal, oil and gas by 2050 with a 25 per cent reduction of energy supply from fossil fuels such as oil, gas and fuels by 2020. However, the Minister for Climate, Energy and Building has stated that the government’s goal is to produce as much oil as possible from the North Sea concurrently with fulfilling the 2050 goal.

4 Is there an official, publicly available register for licences and licensees?

There is no official register for oil licences and licensees. However, the DEA publishes general information about existing hydrocarbon licences, licensees and operators in Denmark. The information is publicly available without cost on the DEA’s website and is updated regularly.

5 Describe the general legal system in your country.

The Danish legal system is a civil law system based on statutory law adopted by the Parliament. However, the legal system is also influenced by court practice. Contractual and property rights are protected by the constitution and the law of expropriation.

Domestic judgments can be enforced through the Danish judicial system. Under the Brussels I Regulation, Danish courts are legally bound to recognise and enforce judgments decided by a court in an EU member state.

Foreign arbitral awards are recognised in Denmark if recognition of the award is not evidently incompatible with the Danish legal system. Arbitral awards in commercial disputes are recognised in Denmark if the award has been given in a country that has adopted the New York Convention. If an arbitral award is recognised in Denmark it can be enforced through the Danish judicial system.

An anti-corruption policy is in force. Further, Denmark has signed conventions on anti-corruption and anti-bribery adopted by the Council of Europe, the UN and the OECD.

The Danish regulation on anti-corruption and anti-bribery is in compliance with the OECD Anti-bribery Convention (the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions) and the UN Convention against Corruption. The Danish regulation is found in the Danish Penal Code and the Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism (the Danish Money Laundering Act).

According to the Danish Penal Code, misuse of a public position infringing private or other public entities is punishable by fine or imprisonment for up to two years. Embezzlement of public funds is punishable by imprisonment for up to one and a half years. Bribery of public servants or attempts hereof is punishable by a fine or imprisonment for up to six years and under certain circumstances an agent's breach of a fiduciary duty combined with the agent receiving money or other benefits is punishable by imprisonment for up to four years. Legal entities are also subject to punishment by fines under these provisions.

The Danish Money Laundering Act implements the EC Directive on Money Laundering (EC 2005/60) and the act mainly encompasses persons or entities performing financial transactions or services, or both. The main purpose of the act is to prevent money laundering and financing of terrorist organisations. The act imposes, inter alia, certain requirements to obtain and file certain credentials on persons or entities involved in a financial transaction or providing or receiving financial services and to report suspicious transactions to the public authorities.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The Subsoil Act (1981) with later amendments provides the framework regulating oil activities in Denmark, whereas adaptations and more detailed regulations are issued by the Minister for Climate, Energy and Building through the DEA. The model licences and guidelines developed by the DEA are of significant practical importance.

The minister grants licences that confer an exclusive right on the holder to explore and to produce or extract oil within a defined area and subject to specific terms and conditions. Separate licences may be granted for exploration and production or extraction, respectively. An exploration licence may grant the licensee a preferential right to a production or extraction licence.

The minister may grant licences for a term of up to three years for performing specific types of preliminary investigations in order to explore and produce or extract oil or to exploit the subsoil for storage or purposes other than the production of oil.

It is not possible to lease mineral rights from the state. The leasing or farming of mineral rights from a concessionary is allowed but is subject to case-by-case approval by the DEA.

There are no rules or regulations governing when, where or how much oil may be produced.

As of 1 January 2015, the Danish Working Environment Authority (WEA) has taken over the governmental powers from the DEA regarding the supervision of the health and safety aspects of the offshore installations on the Danish continental shelf in the North Sea (see also 'Update and trends').

In the onshore upstream sector (although, at present, there is no onshore production in Denmark), the local authorities have, along with the DEA, governmental powers with respect to the supervision of, for example, the environment and the working environment.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

There are no specific legislative provisions in the Subsoil Act that allow expropriation of a licensee's interest. However, according to the Subsoil Act and the model licence the minister and the DEA may, under certain circumstances, revoke a licence. A licence may, for instance, be revoked in the case of non-compliance with provisions in the Act or provisions in the licence, or in the case of bankruptcy.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

Responsibility for the overall strategy and policy for the development and regulation of the energy sector is vested in the Ministry of Climate, Energy and Building. The Minister for Climate, Energy and Building is authorised to provide the detailed regulation within the statutory framework and to grant necessary dispensations.

In numerous respects, the minister's authority to regulate is delegated to the DEA, which generally assists the minister in respect of administering the Subsoil Act.

The governmental policy for the oil sector is thus exercised by the DEA and is focused on environmental, security of supply, competition and public finance issues. As mentioned in questions 1 and 13, the Danish North Sea Fund is the Danish state's oil and gas company. The fund participates, on behalf of the Danish state, as a non-operator with a 20 per cent ownership interest in DUC and in all recent Danish licences and the fund is autonomous from the state.

9 What government body maintains oil production, export and import statistics?

Statistics on oil production, export and import are maintained by Statistics Denmark, which is an independent institution under the Ministry of Economic Affairs and the Interior.

Further, the DEA and the Geological Survey of Denmark are also responsible for compiling all information provided about the subsoil in the course of activities comprised by the Subsoil Act.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

All oil reservoirs are the property of the Danish state and may only become subject to prospecting, exploration or production by any third party by virtue of a licence granted by the Danish government in accordance with the Subsoil Act.

Presently, there is no production on land. However, within the past couple of years a number of licences have been issued for onshore exploration activities. The licence areas for onshore exploration comprise private as well as public lands. To the extent necessary, the DEA may permit the expropriation of real property for the purpose of activities covered by the Subsoil Act. Further, the DEA may allow short-term surveys to be made on private property to determine whether there is potential for further activities. The property owner must be compensated for any damage or inconvenience suffered as a result of the surveys.

There is no distinction made between surface rights and subsurface mineral rights. However, exploration and exploitation of raw materials such as stone, coal, clay and limestone are covered by the Raw Materials Act and not the Subsoil Act.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Activities in connection with exploration for and production of oil are mainly carried out on the continental shelf area in the westernmost areas of the Danish part of the North Sea.

A number of exploration licences for onshore exploration have been issued within the past couple of years. At present, production of oil only takes place offshore.

There are no areas that are off-limits for exploration and production activities in pursuance of the Subsoil Act. However, the Subsoil Act stipulates procedures with which relevant authorities and organisations must comply in order to secure the protection of the environment, other raw materials and fishing interests, etc.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The government policy for the oil sector is exercised by the Minister for Climate, Energy and Building through the DEA.

Exploration and production of oil may only take place pursuant to a licence granted by the Minister for Climate, Energy and Building. Further, licences may only be granted following the approval by a special committee set up by the Danish parliament.

Licences for exploration and production of oil are granted following a public notice inviting applicants to a 'licensing round'.

The government may also grant licences under an open-door procedure, for example, where an application for a licence has been submitted for a specific area without a prior invitation to the public.

Further, the government may grant licences for specific areas through the issuance of a special executive order, which takes effect when a notice concerning the employment of this procedure has been published in the Official Journal of the European Communities.

Another procedure is the neighbouring block procedure. This procedure may be used in situations where an accumulation or a potential discovery already licensed extends into an unlicensed area. In these situations, the most commercially viable solution may be to explore the border-straddling accumulation in connection with the already licensed accumulation.

In determining who will be granted a licence, the Danish government will consider the applicant's expertise and financial base, the exploration activities that the applicants intend to carry out, the way in which the applicants intend to carry out production, the amount the applicants are prepared to pay for the issuance of a licence and other relevant, objective and non-discriminatory criteria.

After a public notice inviting applications, the Danish government may decide not to grant any licences on the basis of the applications received.

Pursuant to the Subsoil Act, the Minister for Climate, Energy and Building may decide that the state or the state-owned company shall be entitled to purchase up to half a licensee's ongoing production of oil. In addition, some licences contain provisions on a share of the profits from the activities covered by the licence being payable to the Danish state.

According to the Subsoil Act, the licensees shall reimburse public authority expenditure for administrative case-handling, including the incurred expenses in connection with processing of applications by the DEA. The costs are calculated on the basis of the time consumed for performing the work. The specific rules are listed in Executive Order No. 1032 of 23 August 2007 with later amendments. The time frame depends on the extent of the work to be carried out in relation to processing the application.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

Since 2005, the Danish state has been a mandatory participant in any new licences granted pursuant to the Subsoil Act with a 20 per cent ownership interest owned through the Danish North Sea Fund. The fund is responsible for the state participation in all new licences, which covers open door licences as well as licences awarded in connection with licensing rounds. The fund shall defray costs and receive income involved in new licences. However, the fund has no right to participate in the operating of a licence and is not 'carried' in the exploration phase. The fund only operates in Denmark where the licences are subject to Danish legislation about safety, environment, employee rights and anti-corruption. In May 2014, an act on adjustments to the fund's structure was passed by Parliament changing the fund from a public authority under the Ministry of Business and Growth to an independent state-owned company with its own board of directors. A major objective of the restructuring is to strengthen the Fund's ability in making business decisions.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

In pursuance of the Subsoil Act it may be stipulated in a licence that the licensee shall pay a periodic charge based on the size of the area covered by the licence (area-rental) or a charge on the volume of raw materials produced (royalty). Moreover, the licence may stipulate that a share of the profit from the activities covered by the licence shall be payable to the state. The more recent licences do not stipulate payment of royalties or a share of the profits to the state but the state has a 20 per cent ownership of the licence through the participation in the licence by the state-owned Danish North Sea Fund. Furthermore a one-time fee must be paid to the DEA both on submission of the application and upon the issuance of the licence.

In Denmark, tax stabilisation measures apply to DUC, but other licensees are not subject to any protection in this regard.

15 What is the customary duration of oil leases, concessions or licences?

Exploration licences are granted for a term of up to six years, which may be extended by up to two years at a time for the purpose of further exploration. The total term of exploration may only exceed 10 years in exceptional cases.

When the terms and conditions in an exploration licence have been met, the licensee shall be entitled to an extension of the licence with a view to production. The licence term may only be extended for those parts of the area that contain commercial accumulations that the licensees plan to exploit, and not by more than 30 years. Licences granted for the purpose of production may be prolonged where warranted by special circumstances.

16 For offshore production, how far seaward does the regulatory regime extend?

The Subsoil Act applies to prospecting, exploration and production of oil in the land territory and territorial sea of Denmark and on the Danish continental shelf.

In accordance with the Act on the Continental Shelf, Danish law applies to installations for exploration and production activities on the continental shelf.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

There are no differences between the regimes governing rights to explore for or produce different hydrocarbons, which are all governed by the Subsoil Act. Similarly, as a starting point, there are no differences between the onshore and offshore regimes, however, certain guidelines issued by the DEA are targeted specifically towards onshore or offshore activities, respectively.

Until 1 January 2015 the DEA functioned as a one-stop shop authority for the offshore activities, but from this date the WEA has taken over the supervision of health and safety issues related to the working environment on offshore installations and certain offshore vessels (see also 'Update and trends').

Regarding onshore activities, the local municipalities and emergency preparedness coordinators must be involved with regard to zoning regulations and emergency procedures.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

There are no organisational requirements for a licence-holder under the Subsoil Act and a licence-holder can be any Danish or foreign natural or legal person.

The Act requires each licensee to have the necessary expertise and financial resources. The requirement of expertise can be met by agreements with third parties that have such expertise or for instance through the operator of the licence. Each licensee shall provide security for the performance of the obligations under the licence. The requirement of necessary financial resources and security can be met by a bank or parent company guarantee.

Exploration and production activities may only take place by virtue of a licence granted by the Danish government. The application procedure is mentioned under question 12. Before exploration or production activities can commence, a plan for said activities must be approved by the DEA.

All Danish companies, including a subsidiary or a branch, must register with the Danish Business Authority. The costs and time frame depend on the specific case.

19 What is the legal regime for joint ventures?

All existing licences, both offshore and onshore, consist of joint ventures. The companies participating in a joint venture share the economic risk and pay expenses according to the joint operating agreement. The joint operating agreements must be approved by the DEA.

The formation and organisation of joint ventures is not governed by any statutory regulation under Danish law.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

The Subsoil Act stipulates that where an accumulation of oil extends into the areas of several licensees, the relevant licensees shall coordinate exploration and any subsequent production activities. Agreements in this respect are subject to approval by the Minister for Economic and Business Affairs.

Further, the Subsoil Act stipulates that where an accumulation of oil extends into the territory of another country and an agreement on the coordination of exploration and production is made with the relevant country, the DEA may order the licensee whose licence includes the Danish share of the accumulation to take part in such coordination.

21 Is there any limit on a party's liability under a licence, contract or concession?

The Subsoil Act contains rules on strict liability for activities connected with the exploration and production of oil. Under the act, the licensee must indemnify all claims whatsoever made by any third party against the state as a consequence of the licensee's activities. The general prerequisites for imposing liability under Danish law must be fulfilled.

The Subsoil Act requires the licensee's liability for damages to be covered by insurance. If a licence is granted to several parties jointly, the parties are jointly and severally liable to any damages under the Act.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

As mentioned in question 18, each licensee shall provide security for the performance of the obligations under the licence.

If the licensee is a branch or a subsidiary of another company the model licence requires a parent company guarantee to provide security of necessary financial resources. The terms and conditions of the parent company guarantee are set out by the DEA and the guarantee is usually provided by the ultimate parent company. The guarantee is unlimited, irrevocable and without any time limit but does impose a monetary limit. A model parental guarantee is available at the DEA's website.

Security deposits are generally not required for work commitments or otherwise. However, pursuant to the model licence the DEA may require additional security in any form, if necessary.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

There are no requirements about using a minimum of locally sourced goods, services or capital. As a member of the EU, statutes and regulations cannot be inconsistent with the rules of, inter alia, non-discrimination and free movement of goods, services and capital within the EU.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

See question 23.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

In accordance with the Subsoil Act, the model licence and the joint operating agreement for hydrocarbon activities, the DEA must approve a transfer of licence interests whether this is done directly or by change of control.

The approval process includes submitting a written application for the DEA's approval of the proposed transfer. As part of this application the DEA must obtain a copy of the transfer agreement including all commercial and financial terms for the transfer, as well as any required information regarding the new licensee's technical expertise and financial resources as mentioned in question 12. The expected processing time is approximately one month and the DEA may charge a fee for processing of an application of approval (see question 12 about reimbursement of costs for administrative case-handling). The joint operating agreement contains a pre-emptive right. According to the joint operating agreement a party that receives an offer from a third party to purchase its interest must first offer the interest to the other licensees on the same terms. Only when the other licensees do not wish to make use of their pre-emptive right may the interest be transferred to the third party. As the North Sea Fund is a mandatory participant in all licences, the government indirectly holds pre-emptive rights with regard to the transfer of licences.

26 Is government consent required for a change of operator?

An agreement about a change of operator is subject to approval by the government. According to the joint operating agreement the operator's right is not assignable without the written consent of the other licensees and the DEA.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

The DEA's approval of an agreement about transfer or change of control is subject to a fee (see question 12 about the reimbursement of costs).

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

Denmark has ratified all relevant international treaties with regard to decommissioning, such as the Convention on the Continental Shelf, UNCLOS, OSPAR and the London Convention. Denmark has officially stated that all offshore constructions must be removed after the facilities have been abandoned. However, some installations may be retained for 'other purposes', such as importing and storing natural gas.

Decommissioning of platforms is further regulated by the Subsoil Act and Offshore Safety Act. In addition the licence and the joint operating agreement provide further guidance. Before submitting a development plan to the DEA, licence holders must agree the terms of an abandonment agreement. Such an agreement shall state the terms for the security that each party provides to the other parties for its percentage interest share in the abandonment costs.

The licence holders are joint and severally responsible for carrying out decommissioning in accordance with the pre-approved abandonment plan. Licence holders have a strict liability for any accidents that occur during decommissioning or subsequently if any installations are left in situ. The liability is not limited in time.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

The Subsoil Act and the model licence currently contain no specific provisions about security deposits towards the Danish state in respect of future decommissions liabilities. The provided security for each licensee's obligations under the licence also covers the decommissioning phase. However, pursuant to the model licence the DEA may require additional security on a case-by-case basis.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

In pursuance of the Subsoil Act, construction and operation of pipelines may only take place pursuant to a licence granted by the DEA.

In pursuance of the Act on the Continental Shelf, transit pipelines for oil and gas may only be constructed pursuant to a licence granted by the DEA. The transportation of crude oil from the production fields in the continental shelf area of the North Sea is achieved through a pipeline system owned by the state-owned company DONG. All licensees who produce oil on the continental shelf of the North Sea must be connected to the main pipeline or any service pipe constructed by DONG. Licensees connected to the pipeline must pay an amount covering the costs of the construction and the operation of the pipeline and a charge of 5 per cent of the value of the oil and gas produced. However, after 9 July 2012 the latter charge does not apply to the DUC sole concession and licences issued on 1 January 2004 or later. A licensee may, under certain circumstances, be exempted from the obligation to connect to the pipeline if such connection is uneconomical or inexpedient.

Agreements between DONG and other licensees regarding prices and conditions for connection to the pipeline are subject to the approval of the DEA.

The regulation of transportation of oil is otherwise set out as statutory rules mainly based on international rules on the transportation of hazardous goods such as the ADR Convention (road transport) and the IMDG Code (sea transport).

Rules on the transportation of hazardous goods by road are set out in an Executive Order on the Transportation of Hazardous Goods. According to the executive order, the Traffic Agency, the Emergency Management Agency and the National Police have administrative responsibility over the transportation of hazardous goods.

Rules on the transportation of oil by sea are set out in the Merchant Shipping Act, the Act on Safety at Sea and other statutory regulations. The administrative responsibility is vested in the Maritime Authority and the local harbour authorities.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

The regulation of transportation of crude oil by sea or road is very strict and technical in character and consists of a vast amount of acts, executive orders and regulations issued by the relevant authorities. We have described below some of the main parts of the regulatory regime in this respect.

According to the Executive Order on the Transportation of Hazardous Goods, vehicles transporting crude oil or some crude oil products by road must be approved and inspected before they may transport crude oil. Further, an ADR certificate or a national certificate of approval must be issued. The Emergency Management Agency issues the relevant approvals and national certificates of approval. Tanks for transporting crude oil must fulfil the requirements in the ADR convention and must be approved by the Emergency Management Agency. However, pressure tanks must be approved by the Working Environment Authority.

The Executive Order on Transportation of Hazardous Goods also contains provisions on, for example, the classification, naming, recording of goods, marking with danger signs, testing and approval of packaging and necessary transport documents.

All personnel involved in the transportation of crude oil by road must have completed training regarding the rules for the transportation of hazardous goods in general, and regarding the specific rules regarding the transportation of crude oil by road. The training must fulfil the requirements as stated in the ADR convention. The Emergency Management Agency administers the area of education regarding transport of hazardous goods and issues regulations regarding training certificates and approval of training programmes.

Transportation of crude oil by sea is mainly regulated by the Act on Safety at Sea. The Act on Safety at Sea sets the framework of the regulatory regime, and further executive orders and regulations are issued in pursuance of the act regarding, for example, inspection, authorisations, marking, loading and transportation of hazardous goods. Such regulations are issued by the Maritime Authority, which also oversees the area.

Leading crew members involved in the transportation of oil by sea must have a maritime trading certificate. The Maritime Authority issues regulations regarding training and education requirements.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Health, safety and environmental requirements for offshore oil-related facilities are laid down in the Offshore Safety Act, which provides the framework for the regulation. As of 1 January 2015, the administration of the act was transferred from the DEA to the WEA (see also 'Update and trends). The DEA has issued a number of executive orders and guidelines in pursuance of the Offshore Safety Act containing more detailed regulation which is still in effect but some executive orders are to be amended or repealed during spring 2015 as a result of the transfer.

The WEA also oversees the areas of health and safety on onshore oil-related facilities. The requirements are set out in the Working Environment Act and executive orders issued in pursuance thereof.

For requirements regarding standards for offshore installations, prior to the construction of offshore installations, the WEA must approve the overall design and layout of the installation. Further, the licensee must obtain an operating permit and an approval of a health and safety plan that includes plans for staffing, organisation and an emergency plan from the WEA prior to the commencement of exploration and production activities.

The WEA supervises the compliance of the licensees with the Offshore Safety Act and executive orders issued in pursuance thereof. The WEA may conduct control visits on offshore installations without a prior court order and against proper identification. Non-compliance with the requirements in the Offshore Safety Act and executive orders issued in pursuance thereof may result in fines or imprisonment.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The area of health, safety and environment for oil and oil product composition is regulated at an EU as well as at a national level.

The area of health, safety and environment for oil product composition is mainly regulated by the Act on Chemical Substances and Products. The Act contains provisions on, for example, sales, classification and storage of products covered by the Act. In pursuance of the Act on Chemical Substances and Products, the Minister for the Environment has issued an Executive Order on the Quality of Petrol, Diesel Oil and Gas Oil. The Executive Order implements a number of EC directives and contains provisions on the composition of a number of oil products.

The Environmental Protection Agency oversees the area of oil product composition. Non-compliance with the requirements of the Act on Chemical Substances and Products and executive orders issued in pursuance thereof may result in fines.

Update and trends

As of 1 January 2015, the Danish Working Environment Authority has taken over the governmental powers from the Danish Energy Agency (DEA) regarding the supervision of the health and safety aspects of the offshore installations on the Danish continental shelf in the North Sea.

The transfer of competence is part of an amendment to the Danish Offshore Safety Act implementing parts of the EC Offshore Safety Directive (EC 2013/30). The objective of the amendment is to secure the integrity of the public authorities supervising the offshore oil activities by separating health and safety supervision from economic supervision. The transfer does not affect the substance of the Danish health and safety regulation.

On 7 April 2015 a new amendment to the Danish Subsoil Act was enacted.

The amendment introduces a new provision making an assignor of a licence secondary and partly liable for decommissioning costs after the point of assignment. The liability covers facilities established or under construction at the time of the assignment. Furthermore the assignor will be secondarily liable for any decommissioning costs incurred on the state.

Another new requirement is that a licensee has to document sufficient technical and economic capacity before the DEA can allow the transition to a new phase of the utilisation of the licence according to the work plan. Today, such documentation is only required when applying for the licence.

Under the current model licence, a decommissioning plan is to be submitted to the DEA at the latest two years prior to termination of the licence or two years prior to the date when the installation is expected to be decommissioned. As for installations established after the effective date of the amendment act, a decommissioning plan has to be submitted much earlier, namely as part of the application for obtaining approvals under the Subsoil Act by the DEA.

The effective date of the amendment act is 19 July 2015.

As part of an economic growth package, the Danish government in May 2015 proposed allowing operators of mobile drilling rigs to choose taxation under the tonnage tax scheme instead of the normal corporate taxation scheme. The tonnage taxation scheme uses a calculation method for determining the amount of income taxable which may often result in a lower liability compared to the corporate tax scheme. The initiative is conditional upon approval by the EU Commission and – if approved – is expected to come into force by 2017.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The general legislation on labour on the Danish mainland also applies to the oil industry and to installations on the continental shelf.

Rules on the working environment on offshore installations are laid down in the Offshore Safety Act and executive orders issued in pursuance thereof. As of 1 January 2015, the WEA has taken over the competence from the DEA to oversee the working environment on offshore installations and conducts control visits in the field.

Rules on the working environment in the onshore oil industry are laid down in the Working Environment Act and executive orders issued in pursuance thereof. The Working Environment Authority also oversees the working environment on onshore installations and facilities and conducts control visits.

Besides legislation, the labour in the oil industry is regulated by collective bargaining agreements between employer organisations, authorities and trade unions. Most oil companies are members of the Danish Employers' Association of the Petrol and Oil Industry.

All foreign nationals, besides citizens of the Nordic countries, the EU and EEA and Switzerland, must obtain a work permit in order to work in Denmark. Work permits are issued in pursuance of the Aliens Act by the Danish Immigration Service.

In general, Denmark and Danish employers are obligated to treat citizens of the European Union in a non-discriminatory manner. Further, Denmark and Danish employers are obligated to treat individuals in a non-discriminatory manner in pursuance of the European Convention on Human Rights.

Foreigners working in Denmark without the necessary permits may be expelled from the country. Additionally, both the employee and the employer may be fined or imprisoned.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The tax regime applicable to the oil industry consists of a corporate tax (the Corporate Tax Act), levied on the income of the licensee company, and a hydrocarbon tax (the Hydrocarbon Tax Act), levied on income derived from activities in pursuance of the Subsoil Act and other activities in combination herewith.

The taxation rules applicable to the upstream sector were changed from 1 January 2004 and apply to DUC's new sole concession and to licences granted after the effective date. Other concessionaries may, if they so wish, submit to the new taxation regime.

In the taxation regime, the hydrocarbon and corporation taxes, both of which are calculated on the basis of income, are 52 per cent (subject to certain mandatory calculation principles as regards the applicable income) and 25 per cent, respectively.

The Minister for Taxation has the overall responsibility for taxation. However, the Central Tax Administration is responsible for the administration and collection of corporate as well as hydrocarbon taxes.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

There is no mandatory price-setting regime for crude oil or crude oil products. Generally, prices on crude oil and crude oil products are based on the prices for similar products on the international market.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Danish Competition Act grants the Danish Competition Authority (the DCA) the authority to prevent and prosecute anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil and crude oil products. Further, the DCA may also prevent and prosecute anti-competitive behaviour in connection with the pricing of crude oil and crude oil products.

The DCA manages the daily administration of the area of competition while the Competition Council handles major cases and other test cases submitted to the council by the DCA.

The DCA also reviews and approves mergers, acquisitions and transfers of control within the oil sector in accordance with the rules on merger control set out in the Competition Act.

Decisions made by the DCA or the Competition Council in pursuance of the Competition Act may be brought before the Competition Appeals Tribunal. Decisions made by the DCA or the Competition Council may not be brought before the regular courts until the Competition Appeals Tribunal has rendered a decision in the case.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

Upon notification from an undertaking, the DCA or Competition Council may declare that according to the facts in its possession, an agreement, decision or concerted practice is outside the scope of the prohibition against certain anti-competitive agreements. Decisions regarding exemptions shall further specify the period for which the exemption is effective, and may be granted on specific terms.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Danish oil policy is first and foremost influenced by EU legislation. In addition, Denmark is involved in international activities in a number of different forums, including the European Energy Charter, the OECD, WTO, the International Energy Agency, the UN and the Nordic Council of Ministers.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

No. However, the only indirect requirement is that the North Sea Fund is a joint venture partner with a 20 per cent ownership. No local presence is required.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

No rules specifically concerning cross-border crude oil sales or deliveries apply.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Ecuador, a member of the Organization of Petroleum Exporting Countries, produces more than 550,000 barrels per day, 77.83 per cent of which is extracted by the state-owned company, while the rest is extracted by private companies, hired under the mode of provision of services. Oil and its derivatives are one of the main exports of Ecuador; over 55 per cent of total exports correspond to this area whose sale finances almost a quarter of state revenues.

During 2014, 154.7 million barrels were exported, according to EP Petroecuador, which generated a total revenue of US$13,016 million to Ecuador, at an average price per barrel of US$84.16. The increase in oil exports is explained by increased oil production by public companies and the relative fall in refining the rehabilitation of Esmeraldas refinery allowing higher availability crude; although, the obvious drop in price and export values in 2014 owing to lower global oil prices is observed, according to data from the Central Bank of Ecuador. In 2014, the main destination of Ecuadorean oil was to the United States, followed by Chile, Peru, Panama and others.

There are two principal areas of for oil exploration and extraction: the coastal region (Santa Elena Peninsula) and the Ecuadorean Amazon Region in the provinces of Orellana, Sucumbíos, Napo and Pastaza. According to the Ecuadorean Energy and Mining Forum, Ecuadorean oil reserves in September 2014 were 5,900 million barrels, from which two types of crude oil are extracted: eastern crude (light), with a 19° to 20° API and napo crude (heavy and sour), with a 24° API.

The Constitution provides that the hydrocarbon industry in all phases in Ecuador is reserved for the state company, including exploration, extraction, transportation and commercialisation. However, upstream and downstream operations can be delegated to private initiatives, in certain cases provided by law.

During 2014, the national oil production, both the public and private sector, reached a total of 203.1 million barrels, equivalent to a daily average of 550,300 barrels; representing an increase of 5.7 per cent compared with 2013. On the other hand, demand for oil products in the country in 2014 reached 94.7 million barrels.

The public sectors involved in hydrocarbon activities are Petroamazonas EP, the state company in charge of managing the phases of exploration and exploitation since 2013 by Executive Decree 1351-A (November 2012) and Operation Rio Napo, a mixed capital company. EP Petroecuador, the former public company in charge of all of these phases, now manages only the transportation, refining, storage and commercialisation of hydrocarbons. During 2014, public companies achieved an oil production of 158 million barrels, equivalent to a daily average of 432,800 barrels. The gradual increase in oil production by public companies, is based on the investments made in this field by the government in the past two years and the application of new technologies for production, horizontal drilling (which optimised the extraction of oil) and workover.

The primary private sector companies are as follows: Agip Oil Ecuador BV, Andes Petroleum Ecuador Ltd (Consortium of Sinopec and CNPC China Oil), PetroOriental SA, Repsol SA Ecuador, International Petroleum Company SA (Sipec), Tecpecuador SA and Consorcio Petrosud Petroriva, among others. The annual production of private companies during 2014 was equal to 45.1 million barrels, equivalent to a daily average of 123,500 barrels, lower production at 4.5 per cent and 11.0 per cent compared with the years 2013 and 2012, in that order. Two main pipelines are used to transport crude oil in Ecuador: the Trans-Ecuadorean Pipeline System (SOTE), belonging to the public sector and the heavy crude pipeline OCP, operated by a private consortium. In 2014, the Ecuadorean pipelines transported 191.6 million barrels of oil, equal to a daily average of 525,000 barrels. SOTE (497.7km in length) with a carrying capacity of 360,000 bpd to 23.7° API crude carried a total of 132.5 million barrels of oil, while OCP (500km in length), with a capacity of 410,000 bpd, transported 59.1 million barrels.

The oil transported by these pipelines has two locations, one for industrialisation and another for exporting. Refining is organised by Management Refining Petroecuador. This is carried out in the refineries Esmeraldas, La Libertad and Amazon.

In December 2014, prices of Brent and WTI crude show a marked downward trend thanks to an oversupply in the market. In April 2015, the price of West Texas Intermediate (WTI), which serves as a reference for Ecuador, closed at US$51.91; Brent crude, meanwhile, ended at US$60.32, still below the peak for the year, in February, which was US$63.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

In Ecuador there has been a growing a demand for energy that has seen fossil fuels become the primary energy source for the country, and hydroelectricity the main source of electricity. Thus, in recent studies, oil accounts for 84 per cent of the energy mix in the country with 59 per cent of electricity generated by hydroelectric and 38 per cent in fossil fuel power plants, while other sources of renewable energy as solar, wind and geothermal did not even reach 1 per cent according to sources from Conelec and OLADE.

In 2014, domestic demand for oil products in the country reached 94.7 million barrels. Of the total demand for derivatives in 2014, 35.4 per cent was diesel consumption, followed by gasoline demand with 28.0 per cent and 13.2 per cent of LPG; while the difference, 23.5 per cent, corresponds to the consumption of fuel oil No.4, waste, industrial fishing, jet fuel, asphalt, oil spray, avgas and solvents.

The government proposal of an energy matrix change, recommends the development of large power plants in the power sector, especially in the Amazon basin. According to data from the Ecuadorean Centre for Environmental Law, there are viable energy sources in Ecuador, within which geothermal energy offers great potential for electricity generation. There are also other viable sources such as bioenergy, electricity generation from agricultural waste such as rice husks, solar energy (both plants as SP PV modules) and wind energy areas.

In Ecuador, work continues at an accelerated pace on the construction of eight emblematic hydropower projects with an investment of US$5.5 billion and is projected by 2016 to double the installed capacity to 6,779 megawatts (MW), while generating 11,446 jobs, and in the near future is expected that the country will be able to export electricity. These are Coca-Codo-Sinclair, Sopladora, San Francisco mines, Delsintanisagua, Manduriacu, Mazar-Dudas, Toachi-Pilatón and Quijos.

The Ministry of Electricity and Renewable Energy announced by 2016 that over 90 per cent of the energy produced in the country will become from hydroelectric sources, clean energy without pollution to satisfy domestic electricity demand. These projects are in addition to changing energy matrix that drives the system, within which the process is included to converting from gas stoves to electric. Furthermore, the production of new hydroelectric, the state will save about US$800 million without spending on gas subsidy for human consumption.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The Executive Function is responsible for formulating the hydrocarbons policy. Article 6 of the Hydrocarbons Law provides that in order to develop, implement and apply this policy, the state will work through the ministry of the sector and the Hydrocarbons Secretariat (SHE). It must be built on principles such as preserving the national interest in the implementation of the different phases of the industry, the use of resources while preserving the environment, biodiversity and regeneration capacity of ecosystems. Also, the promotion of sustainable development to ensure the supply of petroleum products across the country, protecting consumer interests in terms of timeliness, quality, quantity and prices of products and industrial safety.

4 Is there an official, publicly available register for licences and licensees?

There are two types of records relating to oil: the Oil Record Book, held by SHE in which, according to article 12 of the Hydrocarbons Law, must be registered acts as instruments of incorporation, extension or dissolution of the oil companies, instruments of foreign oil companies, oil contracts entered into by the state or the Hydrocarbons Secretariat, transfer of rights under contracts, instruments evidencing legal representation of the oil companies and the expiration of statements; and the Hydrocarbon Technical Control Register, regulated by the Hydrocarbons Regulation and Control Agency (ARCH), in which must be registered the operating permits related to pipelines, receiving terminals, import and enrol export terminal and storage tanks and delivery, operating permits for service stations and fuel depots, commercialisation contracts and fuel distribution signed by EP Petroecuador with private companies and transfers of rights and obligations.

5 Describe the general legal system in your country.

The general legal system in Ecuador is governed by continental law. Since the 2008 Constitution, the state has moved from the rule of law to a constitutional state government of rights. Contractual law and property rights are based on institutions such as the Property Registry, Commercial Registry and the Intellectual Property Institute, with a legal basis in the Civil Code.

The recognition and enforcement of foreign judgments and arbitral awards is based on article 143 of the Organic Judicial Code, which the Provincial Court has sole competence to try, in order to ensure the effective execution of judgments in foreign countries. This is on the basis of the Hague Convention, Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Foreign Arbitral Awards and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The transparency and social control branch of government assumed the responsibility of developing the Prevention and Combating Corruption Plan, to comply with the mandate established in article 204 of the Constitution of the Republic, in order to prevent and combat corruption.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The 2008 Constitution establishes general principles related to strategic sectors such as oil activities. It establishes that non-renewable natural resources are the inalienable, imprescriptible and indefeasible property of the state. As the main legal source there is the Hydrocarbons Law, Supreme Decree 2967, of 15 November 1978, with the respective regulation implementing the law amending Executive Decree, No. 546, 29 November 2010. Among the accompanying regulations are such as the Regulation of Hydrocarbon Operations posted on 26 September 2012 by Ministerial Agreement No. 389 and the Environmental Regulation of Oil and Gas Operations, published in 2010 by Executive Order No. 1215. These key laws develop the oil and gas activity throughout all phases of exploration, production, transportation, refining, storage, commercialisation, as well as the environmental criteria around them. Executive Decree No. 1747 issued on 15 April 1986, relates to the bases for contracts to provide services for the exploration and exploitation of hydrocarbons. In addition there is the Regulation for the Transfer or Assignment of Rights and Obligations of Hydrocarbon Contracts, published by Executive Decree No. 1363, dated 27 March 2001.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

In Ecuador there is no legal provision requiring oil expropriation. The only measure provided by the Hydrocarbons Law (article 71) is the expiration of contracts for exploration and exploitation or revocation of licences issued by the Sector Ministry. This measure should be requested from the Sector Ministry by the Hydrocarbon Regulation and Control Agency or the Secretariat of Hydrocarbons, by reasoned report. The revocation of a contract implies an immediate return to the state of the contracted areas and delivering all elements related to hydrocarbons activities, as well as the automatic loss of sureties and guarantees rendered under the Act and the contract.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The Coordination of Strategic Sectors Ministry is in charge of directing the policies and actions of the institutions of strategic sectors for compliance with the National Development Plan. The Ministry of Non-Renewable Natural Resources is the authority and sovereign guarantee for sustainable exploitation and developing policies of the hydrocarbon sector. The Ministry of Environment is the technical authority with administrative control, which monitors and audits the environmental management.

SHE is the entity responsible for implementing the activities of underwriting, administration and modification of areas and oil contracts. Meanwhile ARCH is the administrative body responsible for regulating, controlling and auditing the technical and operational activities of the oil industry. There are two public enterprises: Petroamazonas EP (exploration and exploitation) and EP Petroecuador (transportation, storage, refining and commercialisation). Both companies are separate from the above regulatory agencies.

9 What government body maintains oil production, export and import statistics?

Since 2011, SHE has been implementing the project, the Bank of Ecuador Oil Information (BIPE), an organisation created for managing technical information related to the country's exploration and production of hydrocarbons, and disseminates it to industry, partners and potential investors in the domestic and foreign oil sector. BIPE records information about the subsoil and, therefore, encourages national and international investment. This project began in December 2011. By 2016, BIPE will have recovered 70 per cent of the existing historical information and will have systematised 92 per cent.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

The Hydrocarbons Law (article 1) provides that the hydrocarbon industry is a public utility at all stages such as production, processing, transportation and commercialisation. Therefore expropriation of land, buildings, facilities and other property is viable, with the establishment of general or special easements as may be necessary for the development of the industry. It should be noted that the state may delegate the exercise of these activities related to the hydrocarbon industry to private initiatives.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Upstream and downstream in Ecuador are onshore activities. Each contract for exploration and exploitation of hydrocarbon deposits includes a block with a land area of no more than 200,000 acres divided into lots, according to the plans of the Military Geographical Institute. However, in the event of offshore drilling, for positioning drilling rigs in the seabed, the contractor shall carry out geological, geophysical and geotechnical studies, soil and meteorological studies and bathymetric models. All types of contract for exploration and exploitation of crude oil on Ecuadorean territory need prior authorisation from the Hydrocarbons Secretariat. In some cases these activities are subject to special provisions by the Ministry of Environment.

In hydrocarbon operations, contractors must, at least, implement the practices recommended by the American Petroleum Institute, particularly the following: Exploration and Production Standards and the Manual of Petroleum Measurement Standards.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The state, through the Hydrocarbons Secretariat, delegates the exercise of hydrocarbon activities to national or foreign enterprises through partnership agreements, participation, delivery services for exploration and exploitation of hydrocarbons or by other contractual forms of delegation in force in Ecuadorean law (Chapter III of the Hydrocarbons Law). Mixed economy companies can also be constituted in the country with domestic and foreign companies legally established and with recognised competence. The bases, requirements and procedures for procurement will be determined by the tender committee in accordance with the law.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The Hydrocarbon Secretariat determines and assigns areas of direct operation of public enterprises, through a reasoned decision on the delimitation of the area. Other conditions of exploration and exploitation will be established.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

The state shall receive, on account of the exploration and exploitation of hydrocarbons, at least the following income: raw input, surface rights, royalties, compensation payments, contributions in compensation works, participation in surplus sales prices and oil for transportation and participation fees. The Hydrocarbons Secretariat has set allocation rates of oil production in accordance with the contracts and regulations and the Hydrocarbons Regulation and Control Agency has the power to set and collect the values corresponding to the fees for management services and control activities.

15 What is the customary duration of oil leases, concessions or licences?

Contracts for crude oil exploration last up to four years, renewable for up to two years with prior justification by the contractor and authorised by the Hydrocarbons Secretariat, while contracts for crude oil exploitation can last up to 20 years, renewable by the Hydrocarbons Secretariat.

16 For offshore production, how far seaward does the regulatory regime extend?

Under the United Nations Convention on the Law of the Sea (UNCLOS) the regulatory regime extends to 200 nautical miles, especially the 176 nautical miles of the exclusive economic zone that are within those 200 miles, which extends to 1,072,534km^2.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

The delimitation of the contract area shall be certified by the Military Geographic Institute and the Hydrocarbons Regulation and Control Agency and be annexed to the contract. The contract area will be identified in the Ecuadorean oil plan and the respective tender documents. In offshore drilling there must be gravel processing systems with effluent treatment systems and a system of treatment for sewage and greywater. In land areas, drilling platforms in the effective area of operations will be levelled, compacted and properly drained. For operations in hilly areas, several levels or partially levelled sites must be considered to minimise erosion. On offshore platforms used for drilling there should be no interference with the normal development of fishing activities, tourism, navigation and air navigation, resulting in it being considered a safety area of one nautical mile.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

The Ecuadorean state may explore and exploit directly through Petroamazonas, the state company. Only exceptionally, it may, through a tender procedure, delegate such activities to domestic or foreign companies that have accredited experience, technical and economic capacity and also mixed economy companies through contracts with the Hydrocarbons Secretariat. Contracts may be of a partnership, participation, service delivery or by other contractual forms of delegation in force under Ecuadorean law. For such awards, the following are taken into consideration: an increased amount of investment to be made in the area, guaranteed minimum production in the area and production costs. The natural or juridical person awarded a contract should be registered in the Hydrocarbon Control Technical Register regulated by the Hydrocarbons Regulation and Control Agency.

19 What is the legal regime for joint ventures?

Joint ventures have the same legal status as other companies.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

If common reservoir mechanisms are located in two or more agreed areas during the execution of contracts, contractors will be subject to the provisions of the Hydrocarbons Law and its regulations, as long as these sites or structures are not an extension of the deposits or structures held directly by a Petroamazonas operation as drilling in these areas is not further exploration. In such cases, the contractors shall conduct operational agreements in a unified operation in order to achieve greater efficiency and economy in the operation. For cross-border deposits there are no provisions governing such operations.

21 Is there any limit on a party's liability under a licence, contract or concession?

The contractor shall be responsible for decisions and implementation of technical, environmental, economic and administrative operations, assuming all the risks inherent in the mining operations that are additional to crude oil and hydrocarbon exploration risks. The failure or omission of a technical nature and consequences caused by the contractor or its subcontractors shall be its sole responsibility, and costs and expenses incurred will not be recognised by the Ecuadorean state and will not be deductible for tax purposes as articles 11 and 56 of the Hydrocarbons Law do not provide for that purpose.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Contractors or partners must conduct activities related to the exploration of the contracted area by geological, geophysical, drilling operations and any other accepted method for oil exploration. Before subscribing to the contract, the contractor should provide sufficient assurance in cash, government bonds or any acceptable equivalent up to 20 per cent of the investment committed during the exploration period. This shall be returned to the contractor or its associates at the end of the contract if it can show that it has complied with all its obligations. This guarantee will be liable to breach of any of its obligations within the assigned period. Negligence, carelessness or wilful misconduct in the preservation of property owned by the state will entail civil and criminal liability under the law.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

There is no requirement for a foreign national to give preference to locally sourced products or available investors. Regarding the workplace, there are limitations, as the Ecuadorean laws require compliance of preference for contracting with Ecuadorean workers. Also, it must be stipulated in the contract that there is a willingness to comply with the requirements that the state requires.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

In December 2013, Resolution 116 of the Committee of Foreign Trade – Comex – came into force. Such an arrangement provides for prior checking of imports for 312 tariff lines (products) and the obligation to submit a certificate of recognition for quality to the National Institute of Standardization – Inen – to clear customs. Because of this, during the first quarter of 2014, the Ministry of Industries signed 363 agreements with 400 companies in the country to boost local production, by buying more local supplies and increasing domestic production.

Among the sectors that signed commitments are industries related to food, cosmetics, household appliances, toys, painting, textiles, paper, elevators, cables, generators, appliances, flat ceramics, etc.

Import substitution raised by the government and implementation process is accompanied by investment commitments by Ecuadorian firms and foreign firms operating in the country. This will require that the government is meeting the performance requirements; that is looking to produce locally, buying from domestic suppliers and improving their production, etc.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

In Ecuador, the Regulations for the Transfer or Assignment of Rights and Obligations of Hydrocarbons Contracts provide the power to transfer or assign, in whole or in part, in favour of third parties with prior authorisation from the relevant ministry, since otherwise such transfer or assignment shall be void and will result in a declaration of nullity. Any transfer or assignment is subject to payment of a premium and improving the economic conditions of the contract to the benefit of the Ecuadorean state. It is an obligation to maintain existing guarantees and insurance that may have been initially given for the contract. The contract of transfer or assignment shall be effective from the date of registration in the Register of Hydrocarbons Regulation and Control Agency.

26 Is government consent required for a change of operator?

With respect to the transfer or disposal to others see question 25. However, for subcontracting, the contractor may contract with other persons who are authorised by law. By outsourcing, the contractor does not lose previously acquired obligations in the contract and assumes joint liability with the subcontractor and its staff. In the case of consortia or associations, all the companies that make up the association shall designate among them the company acting as an operator, which will be responsible for hiring under the authorisation of the Hydrocarbons Secretariat.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

During the exploration of hydrocarbons and the period of exploration and research, the transferor company will pay the state, through the Ministry of Non-Renewable Natural Resources, a premium of US$5,000 for each 1 per cent stake in the transferred or assigned third party contract. If the transfer or assignment is made during the operating period the transferor must pay to the state, as a premium, through the Ministry of Non-Renewable Natural Resources, a transfer or assignment of the value equivalent to 0.1 per cent of net income obtained in the year preceding the year of transfer or assignment and each 1 per cent stake that it intends to transfer or transfers to third parties, according to the income tax statement. This premium in no case can be less than US$5,000 for each 1 per cent stake. Likewise, the transferee or beneficiary of the assignment or transfer must deliver to the Ministry of Non-Renewable Natural Resources, under the intention of improving the economic conditions of the original contract, US$5,000 for each 1 per cent stake. In contracts for further exploration and exploitation of marginal fields, corresponding to the concepts of transfer or assignment premium and improving the economic conditions of the original contract, the value shall be equal to 10 per cent of the values listed above.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The Hydrocarbons Law regulates the abandonment and decommissioning of facilities and pipelines for oil and gas. The contractor shall deliver to the Hydrocarbons Secretariat, at no cost and in good condition, wells and work camps, which, at that time, are active and in their present condition, and all equipment, tools, fixtures and other furniture and properties that have been acquired for the purposes of the contract. During the final 10 years of the term of a contract, the Hydrocarbons Secretariat may make an agreement with the contractor towards special forms of investment amortisation and payment of the unamortised portion. Also, within the first six months of the initiation of the contract, the contractor is required to submit an environmental impact study, which will detail all phases of the contract, including a plan if it needs to abandon the area, and which includes the decommissioning work that will be carried out once the transaction is completed, the abandonment of the project delivery and the marking of the respective environmental study area. For closure the contractor must be aware of the following:

- the organic layer must be redistributed in the soil;
- the topsoil must be planted and reforested with the native species of the area; and
- the company that undertakes the geophysical survey and the hired workforce will be responsible for any environmental damage that may take place as well as the implementation of measures of prevention, control and rehabilitation.

When it is appropriate to abandon a well permanently in offshore drilling, the casing must be sealed 1.5 metres below the seabed and other facilities protruding from the seabed must be withdrawn, to prevent damage or impediments to fishing, boating or other activities.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

In general, before signing the contract, every tenderer must pay a guarantee, especially for future decommissioning liabilities. Revenue from commercialisation, related to environmental remediation activities, makes up the Environmental Rehabilitation Fund, which aims to cover the costs of environmental remediation activities and in the hydrocarbon sector, the expenditure, audit, control and physical analysis by a chemical laboratory, performed or ordered by the Subsecretariat of Environmental Protection.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The transport of oil and its products is regulated by the Hydrocarbons Regulation and Control Agency, which also oversees and supervises the construction of pipelines. For maritime transportation only, the Hydrocarbons Regulation and Control Agency coordinates with the Directorate of Merchant Marine and Littoral for setting the rates. Pipeline Management is responsible for the transportation of crude oil in the country. In this respect, SOTE is one of the most important operators in the country, along with OCP Pipeline Heavy Oils.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

An authorisation or notification issued by the Hydrocarbons Secretariat to transport oil from collection centres or to connect with main pipelines is required. In addition, the initial operation of a pipeline requires an operating permit from the Hydrocarbons Regulation and Control Agency, which will be awarded after a prior technical report of efficiency and safety.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

During the first six months of the contract, the contractor must perform an environmental audit of the contract area. This audit must be approved by the Ministry of Environment. Further, there must be a study and an environmental management plan. Studies must be carried out by the contractor, with specialised firms, previously qualified by the Ministry of Non-Renewable Natural Resources, and the contractor shall be subject to the Regulation to replace the Regulation for Hydrocarbon Operations in Ecuador. It must have an environmental warranty before environmental licensing, policies or guarantees can be obtained. Failure to comply will result in sanctions established in article 77 of the Hydrocarbons Law.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The Hydrocarbons Regulation and Control Agency, together with the Ecuadorean Standards Institute, regulates and determines the quality and composition of petroleum products. Adulteration in quality, price or volume of petroleum products must be sanctioned by the Director of the Hydrocarbons Regulation and Control Agency. Non-compliance the first time will result in a fine of 25 to 50 basic unified wages; the second time with a fine of 50 to 100 basic unified wages and the suspension of 15 days of operation of the establishment and the third time with a fine of 100 to 200 basic unified wages and definitive closure of the establishment.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The Labour Code, the Constitution and the Social Security Law defend the rights of Ecuadorean and foreign workers. The Hydrocarbons Law indicates that contractors in exploration and exploitation must employ a minimum of Ecuadorean workers as follows:

- 95 per cent of staff;
- 90 per cent of administrative staff (within two years, 95 per cent of the administrative staff should be Ecuadorean); and
- 75 per cent of the technical staff, unless Ecuadorean technicians are unavailable.

The contractor shall perform technical and administrative training, so that within the first five years of the operating period, the work operations are entirely carried out by Ecuadoreans on the administrative side and there is a minimum of 90 per cent of Ecuadoreans employed as technical staff. Workers will receive 3 per cent of the profits and 12 per cent will be paid to the state and allocated to social investment projects and land development in areas where hydrocarbon activities are carried out. Contractors should be aware of the penalties of the Hydrocarbons Law and established in the Labour Code from breaches of the above requirements.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The royalties, income tax, state holdings and generally dependent charges of the sale prices of hydrocarbons in the foreign market are governed by the actual sales prices or with reference to the prevailing circumstances. Companies involved in the exploration and production of hydrocarbons are subject to the minimum tax for companies on their tax base. The Internal Revenue Service is the agency responsible for collecting state taxes. The rules are contained in the Internal Tax Regime Law.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Article 71 of the Hydrocarbons Law regulates price-setting. It provides that royalties, income tax, state holdings and generally dependent charges of selling prices of oil in the international market are governed by the actual sales prices or with reference to the prevailing circumstances.

The royalty equivalent, falling due to Petroecuador, and the shares of the subsidiaries of the sales prices of oil in the international market state agencies, shall be governed by the actual sales prices of the hydrocarbons FOB value.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Superintendence of Market Power Control, which was established by the Law of Regulation and Control of Market Power from 13 October 2011, requires institutions to keep hydrocarbon control documentation and give essential assistance to perform market studies and research that may be relevant in order to avoid, prevent and punish the abuse of economic operators with market power and anti-competitive practices. These conditions are incorporated into the law referred to in article 38, paragraph 1.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

The procedure for these determinations is performed by the Superintendence of Market Power Control, which will define the relevant market, namely, the market for the product or service, the relevant geographic market and the characteristics of specific groups of sellers and buyers involved in the same.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

The Constitution and the international human rights treaties ratified by the state shall prevail over any other legislation or governmental action. Ecuador was a member of the Organization of Petroleum Exporting Countries from 1973 to 1992 and has been a member again since November 2007.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Foreign companies wishing to enter into contracts contained in the Hydrocarbons Law must be domiciled in the country and meet all the requirements of the law (Companies Act and the Law on Public Procurement). The clearance of these companies involves the

Update and trends

During February 2015, the Hydrocarbons Secretariat led Surrender Internal Auditors 2014 in presenting the main achievements and work over the past year.

The macro presentation is based on six areas: strategic direction, axes (objectives and bonding), achievements, line management, budget implementation and challenges.

Among the lines of management, exhibitions focused on issues such as Suroriente Ronda, prior consultation, the Bank of Ecuador Oil Information, development plans, fairs and events, conventions and evaluation of the Ecuadorian hydrocarbon potential.

Some achievements were highlighted during the Surrender technical administration of the 18 contracts with the state that included 11 proposed amendments fees or subscription terms, four amending agreements, assessment of hydrocarbon potential of the Ecuadorian coast, the oil and gas exploration (shale gas and oil) of Basin East and the adequacy and implementation of building Covidal and the future headquarters of SHE.

Relating to recent regulatory changes, 2015 will host new regulations, the National Assembly is discussing the proposal of a new Labour Code and the promotion of draft amendments to the Social Security Law, concerning, among other things: regulations regarding the distribution of workers' profits, the thirteenth salary, incorporating housewives into the Social Security and the elimination of the permanent contract for indefinite time.

establishment of a branch in the country. These foreign companies are subject to the Ecuadorean legal framework. This is implied in every contract entered into by the state with the Ministry of Hydrocarbons.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

At present, there are no rules concerning this issue.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Egypt is a significant non-OPEC oil producer and refiner. Its strategic location is valuable for the Mediterranean region and global energy markets. According to a study by the Mediterranean Energy Observatory (OME) published in 2011 on the energy perspectives in Egypt, the country's proven crude oil and condensate reserves are 4.5 billion barrels, that is, approximately 7 per cent of the Mediterranean region's oil reserves and 0.3 per cent of the world's total reserves. It has the sixth largest proven oil reserves in Africa. Over half of these reserves are offshore reserves.

At present, Egypt produces approximately 14 per cent of the oil in the region. Since the start of commercial production in 1910 from the Gemsa field in the Sinai Peninsula, more than 10 billion barrels of oil have been produced. More than 75 per cent of all crude oil and condensate produced were from fields in the Gulf of Suez and Sinai Peninsula, which, at present, hold over 40 per cent of remaining oil reserves.

A few fields were developed in the early 1900s. Revised policies in 1953 that provided a more favourable framework for international petroleum companies led to further development. In the mid-1980s, the government actively promoted the use of natural gas as a substitute for oil to make use of Egypt's gas reserves and to free up oil for export. In 2009, investments in the petroleum sector amounted to 20.2 per cent of the total investment in Egypt, and exports of petroleum and related products amounted to approximately US$10 billion.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

According to the OME study, the total primary energy production in Egypt was 90 million tonnes of oil equivalent (Mtoe) in 2008. Oil share in total primary energy production has declined steadily, from about 95 per cent in 1970 to 39 per cent in 2008 because of booming natural gas production.

Energy demand has increased from 6.6 Mtoe in 1970 to 73 Mtoe in 2008, an average growth of 6.5 per cent per year. Oil has been the dominant fuel in Egypt's energy mix since the 1970s. Oil demand increased from 5 Mtoe in 1970 to 35 Mtoe in 2008. Oil's share in the energy mix, however, has decreased from 76 per cent in 1970 to 47 per cent in 2008.

Oil accounts for 28 per cent of industry energy consumption in Egypt. It is also the dominant fuel in the transport sector, with consumption at 15 Mtoe in 2008. In the residential sector, the energy mix was 49 per cent oil in 2008.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Egypt has an overarching policy regarding oil exploration, development and exploitation, which has been extended to gas exploitation since the first commercial discovery of gas. Today, institutional responsibilities for Egypt's energy sector are mainly with the Ministry of Petroleum (MOP) and the Ministry of Electricity and Energy (MOEE) and their affiliated holding companies. The MOP is responsible for the entire chain of oil activities in Egypt.

4 Is there an official, publicly available register for licences and licensees?

There is no official register for licences and licensees. However, there is a detailed map of all concession areas and concessionaires operating in Egypt on the website of the MOP, which is freely accessible. Additionally, all concession agreements for oil exploration, development and exploitation are issued by laws and published in the Official Gazette. Issues of the Gazette may be obtained for a minimal fee from the government press (Al Amiria Printing House).

5 Describe the general legal system in your country.

Egypt is a civil law jurisdiction, with a long legal tradition and a strong judiciary. The Egyptian legal system is based on the combination of Islamic (Shariah) law and Napoleonic Code, translated into a well-established set of codified laws.

Egypt's supreme law is its written constitution. With respect to transactions between natural persons or legal entities, the most important legislation is the Egyptian Civil Code of 1948, which remains the main source of legal rules applicable to contracts.

Despite the non-existence of an established system of legally binding precedents, previous judicial decisions of the higher courts, particularly the Court of Cassation and the Supreme Administrative Court, have strong persuasive authority. Court judgments are enforced through court bailiffs. Egyptian courts generally recognise and enforce foreign judgments if certain conditions are satisfied, particularly if a treaty is in place with the country in question on the mutual recognition of judgments.

The Egyptian Arbitration Law governs both domestic and international arbitration. Judges accept and support arbitral proceedings, and awards are not reviewed on the merits by the courts. Enforcement of awards is made through depositing the award with the courts and obtaining an exequatur order. An arbitration award is then enforceable in the same way as a court judgment.

Egypt does not have a specific anti-corruption law. However, bribery is addressed in a section under the Penal Code.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The petroleum industry in Egypt is mainly regulated by two laws: the Public Utilities Concession Law No. 129/1947 and the Fuel Materials Law No. 66/1953. Unlike any other concession contracts, the Fuel Materials Law stipulates that exploration and exploitation concessions pertaining to the petroleum industry are to be effected in the form of a law. Concession agreements, hence, have the force and privileges of a law promulgated in Egypt.

Once an oil concession is promulgated in the form of a law, a concession agreement is then signed between the government, the Egyptian General Petroleum Corporation (EGPC) or Ganoub El Wadi Petroleum Holding Company (Ganope), or both, and the relevant private contracting company, or companies (together, except for the government, being generally referred to as 'contractors'), creating specific contractual obligations.

The specific concession law will govern all aspects related to the concession, while making a few references to other applicable Egyptian laws, such as the Environmental Law, which will apply to certain aspects of the concession in question.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

There are no legislative provisions allowing for expropriation of a licensee's interest. Investments in Egypt are generally protected against expropriation, particularly foreign investments where bilateral investment treaties apply.

However, concession agreements provide that the government may, by ministerial order, in the case of national emergency due to war or imminent expectation of war or internal causes, requisition all or part of the concession production or facilities, or both. The government is, in such a case, obliged to indemnify the contractors in full for the period during which the requisition is maintained.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The MOP is the responsible Egyptian institution for the entire chain of oil and natural gas activities in Egypt and was established through the following key provisions:

- the Fuel Materials Law No. 66/1953, also establishing the General Egyptian Petroleum Organisation under the Ministry of Industry, as amended by Law No. 86/1956 and its Executive Regulations issued by Ministerial Decree No. 758/1972, as amended by Ministerial Decree No. 69/1959;
- Presidential Decree No. 409/1973, creating the MOP through the nomination of a Minister of Petroleum; and
- Law No. 1451/1973, establishing the authorities of the MOP and that of the Minister, as well as directing that the General Egyptian Petroleum Organisation shall be under the MOP.

The government has restructured the petroleum sector to cope with expanding activities of oil, gas, LPG and petrochemicals in Egypt and has established strong governmental entities to achieve its objectives. The government's main arm for implementation of its petroleum policies is EGPC. Four other entities have also been created under the MOP to govern the sector.

EGPC was originally created in 1956 as the General Authority for Petroleum Affairs and transformed in 1976 into the Egyptian General Petroleum Authority by Law No. 20/1976.

In its present form, EGPC is a general authority, having an independent moral personality and subordinated to the Minister of Petroleum. EGPC's board of directors is specifically tasked with carrying out petroleum policies determined by the Egyptian government.

Ganope, previously known as the South Valley Development Company, was established by virtue of Prime Ministerial Decree No. 1755/2002 to manage and supervise all petroleum activities below latitude line N 28 in Egypt. Ganope is tasked with the promotion and development activities in Upper Egypt, which represents over half of Egypt's total area.

9 What government body maintains oil production, export and import statistics?

The MOP maintains all statistics available in relation to oil production, export and import. Some of this information is publicly available on the website of the MOP and on the websites of its five entities: EGPC, the Egyptian Natural Gas Holding Company (EGAS), the Egyptian Petrochemicals Holding Company (Echem), Ganope and the Egyptian Geological Survey and Mining Authority (EMRA).

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

In Egypt, petroleum as a natural resource is not owned by a surface property owner; it is rather inherently a state property and the state is entrusted with the obligation to regulate and control its exploitation. The state holds title and claims property to all minerals including petroleum existing underground and underwater in Egypt.

Such a fundamental nature of the state's natural resources is enshrined in the Constitution. Pursuant to article 32 of the Egyptian Constitution of 2014:

> *[n]atural resources belong to the people. The State commits to preserving such resources, to their sound exploitation, to preventing their depletion, and to taking into consideration the rights of future generations to them. [...] Disposing of the State's public property is forbidden. Granting the right to exploit natural resources or a concession to a public utility shall take place by law for a period not exceeding 30 years. Granting the right to exploit quarries and small mines and salterns, or granting a concession to a public utility shall take place for a period not exceeding 30 years based on a law. The law sets the provisions for disposing of State private property, and the rules and procedures regulating same.*

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Egypt has both onshore and offshore oil fields that are developed, as well as onshore and offshore oil reserves. The primary source for off-limiting areas to exploration is military permits.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

All petroleum production in Egypt takes place through joint ventures between private companies and one of the MOP's holding companies. The holding companies offer periodic tenders for rights to explore new concession areas. Oil exploration rights are granted through a concession agreement (authorised by law) between the investor and the government, represented by the MOP and EGPC or Ganope, for renewable periods. The partner covers the costs of exploration. In the case of a commercial discovery, exploration costs are recovered under a Production Sharing Agreement, executed in line with the concession agreement.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

EGPC and Ganope offer their own bid rounds for oil exploration and development. Exploration licences give the contractor the right to explore for hydrocarbons in specified concessions, based on minimum work commitment and profit oil and gas split parameters.

The contract period is often between seven to nine years and is divided into three phases. The contractor must give up 25 per cent of the concession area at the end of the first and the second exploration phases. At the end of the third phase, the contractor must relinquish the remaining area if it has not been converted into development leases.

In case of a commercial discovery, a production sharing agreement is drafted and a non-profit joint venture company is established between EGPC/Ganope and the contractor, in which the contractor has a 50 per cent stake, for the duration of the concession agreement.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

In all concessions, the government is entitled to a royalty in cash or in kind of 10 per cent of the total quantity of petroleum produced and saved from the relevant area during the development period, borne and paid by EGPC/Ganope, and not the contractor.

A typical concession will also explicitly indicate what production amounts are to be allocated for oil cost recovery and provide a schedule of production sharing between EGPC/Ganope and the contractor. Where there are multiple contractors, their share is allocated in accordance with their respective interests in the concession.

Typically, 35 per cent to 40 per cent of all petroleum produced and saved from all development leases in the concession area is allocated for the recovery of the costs, expenses and expenditures in respect to the exploration, development and related operations under the concession. The excess cost recovery petroleum allocated reverts to EGPC/Ganope in kind or in cash pursuant to the concession agreement. The remaining 60 per cent to 65 per cent of petroleum is shared between EGPC/Ganope on the one hand and the contractor on the other.

15 What is the customary duration of oil leases, concessions or licences?

An oil development licence is usually granted for 20 years, with one optional five-year extension.

16 For offshore production, how far seaward does the regulatory regime extend?

Egypt's continental shelf extends to a 200-metre depth or to the depth of exploitation. Pursuant to articles 77(1) and 81 of the United Nations Convention on the Law of the Sea, ratified by Egypt in 1983, Egypt exercises over the continental shelf sovereign rights for the purpose of exploring it, exploiting its natural resources and authorising and regulating drilling on the continental shelf for all purposes.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

There is no difference between the onshore and offshore oil regimes; exploration and development rights are in both cases licensed by EGPC/Ganope and carried out subject to the terms of the relevant concession agreement. The same regime applies to all hydrocarbons, with slight differences related to the length of licences granted (typically 20 years for oil and 25 years for gas concessions), cost recovery and production sharing.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

There is no registration requirement to enter into a concession agreement. However, while there is nothing pointing to the establishment of a local subsidiary or branch, due to the obligation typically contained in concession agreements for a contractor to maintain an 'office' in Egypt at which notices must be served and for practical reasons of contracting with third parties and employees, foreign contractors commonly establish branches in Egypt at the start of their operations in the country.

Upon commercial oil discovery and pursuant to the concession agreement, a joint venture between the contractor and EGPC/Ganope is established in the form of a joint stock company to act as the operating company.

19 What is the legal regime for joint ventures?

Joint ventures (joint operating companies (JOCs)) are established between and equally owned by EGPC/Ganope and the contractor in the form of a joint stock company for the duration of the oil concession agreement.

The object of the JOC is to act as the 'agency' through which EGPC/Ganope and the contractor carry out and conduct the exploration and development operations required by the concession. The JOC does not own any right, title or interest in the concession and does not make any profit.

The charter of the JOC is typically annexed to the concession agreement and comes into force within 30 days from the signing of the concession agreement by the government and issuance of the relevant law, without needing any formalities. The charter regulates the main aspects of the JOC, which therefore, has a sui generis legal regime. JOCs are exempt from the company and tax laws applicable in Egypt.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Article 45 of the Executive Regulations of the Fuel Materials Law broadly addresses unitisation. In the event of oil drainage between more than one concession areas, EGPC/Ganope may request the concessionaires to cooperate to optimise the use of such areas. If, within six months from the date of notification of the necessity to reach an agreement regarding the unitisation by EGPC/Ganope to the concessionaires, no agreement has been reached, EGPC/Ganope sets the rules to be followed in this respect. In all events, the prior approval of EGPC/Ganope of the unitisation agreement is required.

21 Is there any limit on a party's liability under a licence, contract or concession?

Typically, concession agreements provide that the rights, duties, obligations and liabilities of EGPC/Ganope and the contractor are several and not joint or collective. However, concession agreements also provide that in the case where contractor consists of more than one member, all contractor members are jointly and severally liable for the obligations of contractor under the concession agreement.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Bank and parental guarantees are commonly used, mainly to guarantee the contractor's minimum financial commitment during the different phases of the concession agreement. Parental guarantees are typically limited to the amount of the financial commitment during the relevant phase of the concession. The identity of the guarantor is determined during the negotiation of the concession agreement.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

Contractors and JOCs are permitted to import and are exempted from customs duties, taxes, levies and fees related to the import of machinery, appliances, vehicles, hardware, software and most other items used in their operations. However, such exemption does not apply where items of the same or substantially similar kind and quality are manufactured locally at comparable prices.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

Typically, concession agreements oblige contractors and JOCs to give preference to locally manufactured material, equipment, machinery and consumables as long as their quality and time of delivery are comparable to the internationally available items, unless the price of the local items is higher by more than 10 per cent than that of the imported items (before customs duties, but after transportation and insurance costs have been added).

Concession agreements also typically oblige contractors and JOCs to give priority to local contractors and subcontractors, as long as their performance is comparable with international performance and the price of their services is not higher than that of international contractors or subcontractors by more than 10 per cent.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Generally, pursuant to article 67 of the Executive Regulations of the Fuel Materials Law, as well as the relevant assignment article in the concession agreement, any direct or indirect assignment requires the prior consent of the government, represented by the Minister of Petroleum and, in practice, also the agreement of EGPC/Ganope. Four conditions must be met for the Minister of Petroleum to grant the approval or consent for an assignment:

- the obligations of the assignor deriving from the concession agreement must have been duly fulfilled;
- the assignee must submit to the regulator proof of its financial and technical competence;
- the assignment deed must include provisions stating that the assignee is bound by all covenants contained in the concession agreement, as may have been amended. The draft of such an assignment deed must be submitted to the regulator for approval prior to its execution; and
- the regulator must be provided with proof that the assigned area contains at least one petroleum production well.

The applicable laws are silent as to the aspect of change of control of the concessionaires or contractors, and whether or not such change may be deemed as an indirect assignment. Events of change of control must be reviewed on a case-by-case basis to determine whether a particular event may be deemed as indirect assignment. The government typically extends its control over assignments to shareholders level in cases where the contractor is deemed to be a mere special purpose vehicle and the identity of the shareholders is fundamental thereto. Failure to notify EGPC/Ganope and to obtain the required approvals would result in a breach of contractor's obligations under the relevant concession agreement, entitling the government to cancel the concession. It is worth noting that the relevant farm-in and farm-out agreements must be provided to the government in connection with the application for approval of the respective assignment.

26 Is government consent required for a change of operator?

Government consent is required for the change of operator. The same rules regarding assignment discussed above apply in this case.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

Typically, concession agreements require the payment of an assignment bonus in a number of specific cases, including the assignment to affiliated and non-affiliated companies with the contractor during the exploration or development phases. The amount of the assignment bonus varies and is determined at the time of negotiation of the concession agreement.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

To date there is no legislation covering decommissioning activities in Egypt. In practice, a farm-out agreement usually sets out the parties' agreement relating to the abandonment of activities or decommissioning. Typically, all assets under the concession revert to EGPC/Ganope and all liabilities and obligations, whether financial or contractual remain those of the contractor, including any assignees.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

Not applicable.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Egypt has developed a wide network of oil pipelines that link the major areas of production, distribution, export and import. The major downstream crude oil and petroleum products pipelines in Egypt are owned and operated by the Petroleum Pipelines Company, a subsidiary of EGPC. Another important pipeline in Egypt is owned and operated by the Arab Petroleum Pipelines Company (SUMED).

According to a recent study of the OME, Egypt has 1,645 kilometres of crude oil and condensate pipelines, 2,200 kilometres of oil product pipelines and 1,266 kilometres of LPG pipelines. In addition, there are over 3,000km of pipelines serving the upstream segment of the oil industry, which are fully owned by EGPC and operated by JOCs.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

Pipelines transportation is essentially carried out through the national grid owned and managed by EGPC or its subsidiaries. Otherwise, the transport of oil and gas products, most of which are considered hazardous materials, requires the prior authorisation of the MOP.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

All persons working in concession areas are legally obliged to comply with health and safety requirements and industry standards in carrying out their work. The Executive Regulations of the Fuel Materials Law sets out examples of the measures that must be taken to this effect, including in relation to the state of operation facilities and the machinery and equipment used and the prevention of accidents, fires and production loss or spillage, etc.

Additionally, both the Fuel Materials Law and the Environment Law No. 4/1994 provide for the preservation of water resources and the treatment of industrial waste, particularly with respect to offshore oil fields. Non-compliance with these environmental obligations is subject to a fine in the range of 300,000 Egyptian pounds to 1 million Egyptian pounds. The Egyptian Environmental Affairs Authority (EEAA) is tasked with the enforcement of these obligations.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The general health and safety requirements contained in the Egyptian Labour Law No. 12/2003 apply to the oil industry. The Egyptian Organization for Standardisation and Quality (EOS) is the competent and official body responsible for standardisation activities, quality and industrial metrology.

The prior authorisation of the MOP is required for handling hazardous oil substances and waste, including their storage, transportation and treatment. Detailed records must, by law, be kept in relation to such substances and waste, the means of disposal thereof and the entities entrusted with such disposal, subject to inspection and control by the EEAA. The failure to comply with these rules is penalised with imprisonment of at least one year or a fine in the range of 10,000 Egyptian pounds to 20,000 Egyptian pounds, or both.

Update and trends

It is reported that EGPC officials project the addition of 5,800 million barrels of new reserves until 2030. This should keep Egyptian oil and condensate production at an average daily rate of 720,000 barrels. This outlook assumes more development and oil discoveries in new areas, enhanced recovery and the use of new technology to develop heavy oil and oil shale.

The share of natural gas in the energy mix continues to increase in Egypt, as new gas discoveries are being made. Balancing the increasing domestic demand and the country's export commitments is a growing concern in Egypt. In 2014, a range of solutions was put forward to tackle the energy challenges facing the country, such as the launch of two international bid rounds by EGPC and EGAS for the exploration of oil and gas from new blocks, the import of gas from neighbouring countries (particularly Cyprus and Israel), the drilling for shale gas, the purchase of LNG shipments from Algeria and Russia, and the installation of LNG import infrastructure in Ain Sokhna (with talks about the installation of a second floating storage and regasification unit in Adabeya) to allow the import of larger volumes of gas.

To meet the growing energy needs, the government is targeting the production of energy from renewable resources, such as solar energy from the insolation of the Eastern and Western Deserts, hydropower from the Nile River and wind power from the world-class wind resources along the Gulf of Suez. There is an important investment potential, for both national investors and international players with solid experience, to establish large-scale projects in the renewable energy sector at this time in Egypt, as well as to participate in the feed-in tariff scheme launched by the government in 2014 to build renewable energy projects, currently concentrated in Aswan or on the Gulf of Suez.

The government is additionally working towards restructuring the energy subsidies and adjusting the domestic fuel prices in order to correct the existing market distortions. For example, in 2014, the government announced a number of fuel subsidy cuts that in some cases almost doubled the natural gas prices for end users. It is also crucial for the country to improve energy productivity to reach the international standards of energy efficiency that is considerably lacking in Egypt.

Further, the MOP is reported to be finalising regulations to allow the private sector to import natural gas directly. The regulations will allow private sector companies to use the national natural gas infrastructure for imports for a fee through a contract with EGAS. The move is set to deregulate the energy market and reduce the direct burden on the government.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The general Labour Law applies to oil industry labour, whether local or foreign. Additionally, the Fuel Materials Law requires the obtainment of the approval of the MOP prior to the recruitment of foreign labour, who must also obtain a work permit in order to be able to work in Egypt.

The 9:1 ratio of local to foreign labour is applicable to contractors and JOCs operating in Egypt. However, contractors and JOCs are typically exempted from this ratio upon request to the competent authorities and the recommendation of EGPC/Ganope. The Fuel Materials Law requires the appointment of local personnel to assist the foreign employees with a view to replacing them after a certain period of time. Also, typically, concession agreements require carrying out training programmes for local employees to gradually replace the non-executive expatriates.

Non-discrimination is a constitutional right. Article 9 of the Egyptian Constitution of 2014 provides for the equality of opportunity, and article 11 particularly affirms the equality of men and women.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Generally, the contractor is subject to Egyptian income tax at the rate of 40.55 per cent and must file returns, assessments of tax and bookkeeping. EGPC/Ganope assumes, pays and discharges, in the name of the contractor, the contractor's Egyptian income tax out of EGPC/Ganope's share of the produced petroleum to the General Tax Authority.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Petroleum product prices are set and administered by the government. The valuation of cost recovery crude oil is specified in the concession agreement and is typically linked to the market price, being the weighted average prices realised from the sales (of comparable quantities on comparable credit terms) by EGPC/Ganope or the contractor during the relevant calendar quarter, whichever is higher. Production sharing oil may be freely disposed of, with priority given to meeting the requirements of the local market from the contractor's share of crude oil.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Egyptian Competition Authority (ECA) is tasked with the prevention and punishment of anti-competitive practices in Egypt. The ECA was established in August 2005 by virtue of Competition and Antitrust Law No. 3/2005.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

Egyptian law does not require the obtainment of a governmental approval or clearance prior to any proposed transaction, but only the notification of the ECA within 30 days from the closing date. The ECA has no right of intervention through reversal of the transaction or otherwise. There is no review process foreseen by the law, nor any time limits for replying to a pre-closing notification.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Egypt is not a member of OPEC and is not bound by the OPEC production and export guidelines. It became a member of the Organization of Arab Petroleum Exporting Countries in 1973.

Egypt became a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) in 1959, the Convention on the Recognition of Foreign Judgments in Civil and Commercial Matters (the Hague Convention) in 1961 and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the Washington/ICSID Convention) in 1972.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

There is no limitation on the acquisition of oil-related interests by foreign nationals, whether directly by companies or indirectly by individuals. Foreign companies do not have to have a local presence in Egypt in order to be able to own oil-related interests. However, EGPC/Ganope will approve such an acquisition of interest either at the stage of the bid or at the time of assignment of interest from one contractor or contractor member to another investor.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

EGPC and Ganope have a preferential right, upon prior notification to the contractor, to purchase a contractor's production-sharing crude oil to meet the requirements of the local market. The oil is, in this case, priced similarly to that allocated to cost-recovery or as otherwise agreed between EGPC/Ganope and contractor.

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Faroe Islands

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The Faroe Islands are an autonomous province of Denmark, with approximately 48,000 inhabitants. Situated roughly halfway between Scotland and Iceland in the north-east Atlantic, the Faroe Islands are an archipelago of 18 mountainous islands, with a total land area of some 1,400km^2 and a sea area of 274,000km^2. The legislative and administrative competence concerning mineral resources in the Faroese subsoil has been transferred from Denmark to the Faroese Home Rule authorities. So far there is no oil production in the Faroe Islands.

In 2000, the first Faroese licensing round was launched within a contiguous area covering approximately 14,000km^2 located to the east and south-east of the Islands. The level of interest was high and the first round resulted in the award of seven licences and included the drilling of a total of eight exploration wells.

Four years later, in 2004, the second Faroese licensing round was launched. The 19,000km^2 area offered for licensing consisted primarily of basalt-covered areas to the east and the south of the Faroe Islands. In January 2005, the Faroese government granted seven licences to eight companies organised in five joint ventures or as individual companies. A firm work programme was agreed for the first phase with seismic and other surveys as well as processing and interpretation with the purpose of maturing the licensed areas for future exploration drillings. Two of the licences contained stipulations on exploration wells and appraisal wells in the late phases of the licences.

In July 2008, the Faroese government launched the third Faroese licensing round. The total area offered for licensing under the third licensing round covered some 38,000km^2. The areas that were offered for licensing included areas that had been offered for licensing before and areas that had been relinquished, as well as new acreage. The blocks offered for licensing were technically challenging because the knowledge of the strata under the basalt is limited. In December 2008, the Minister of Trade and Industry awarded three licences to five companies, all of which already participated in licences on Faroese territory.

As of April 2015, three licences are in force with the following operators: DONG Energy (two licences) and Statoil (one licence) with DONG Energy and OMV as co-licensees. Under the Faroese licences, no state company is being carried in the exploration phase.

In 2014, four licences were relinquished. Due to this, Atlantic Petroleum and ExxonMobil no longer participate in any exploration licences on the Faroese continental shelf. The Faroese continental shelf remains a relatively unexplored part of the north-west Atlantic Margin, and recent developments immediately adjacent to the Faroese–UK boundary have increased optimism. Only relatively few exploration wells have been drilled, and the wells are not widely distributed and have only penetrated a limited part of the stratigraphy. The Faroe Islands are first and foremost of interest for the international oil industry because of the exploration activities presently taking place in the vast sea territory of the Faroe Islands. The Faroese oil consumption is of little significance from an international perspective due to the small size of the population (48,000). Transportation, distribution and marketing of oil in the Faroe Islands are carried out by national and international companies of various sizes. The Faroe Islands do not have any oil-refining capacity.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

In 2005, 95 per cent of the total energy consumption in the Faroe Islands was met by oil. About 4 per cent of the total energy consumption was met by hydro and wind power.

In 2011, about 60 per cent of the production of electricity was derived from oil, 35 per cent from hydro energy and 5 per cent from wind energy.

In 2011, Faroese oil consumption reached 218,210 tonnes. Of these, 59,138 tonnes of oil were consumed by fishing vessels. All of the Faroese oil consumption is met by foreign production.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The policy of the Faroese government is to provide for prudent and appropriate exploration and exploitation of hydrocarbon resources for the benefit of the Faroese economy and employment opportunities and to plan the activities with due consideration given to fishing, navigation, the environment, nature and other interests of society.

In 2006, the Faroese government set a general energy policy with the aim of increasing the use of wind power and reducing the oil consumption of the commercial fishing fleet. The general energy policy consists of two main goals: for the fishing fleet to use 15 per cent less energy by 2015 for a comparable fishing effort; and for 20 per cent of the land-based energy consumption to be provided by renewable energy sources by 2015.

In 2009, the Faroese parliament adopted a Climate Policy for the Faroe Islands. The overall goal of the policy is to reduce greenhouse gas emissions by 20 per cent in 2020, compared with the level of emissions in 2005. Among other matters, the policy sets goals for a decrease in consumption of oil for heating by 50 per cent by 2020, a reduction of fuel consumption in the transport sector by 50 per cent by 2020 and that 75 per cent of the overall electricity production be derived from renewable energy sources by 2020.

4 Is there an official, publicly available register for licences and licensees?

The Faroese Earth and Energy Directorate are responsible for all administrative tasks relating to petroleum exploration and exploitation activities. The directorate publishes general information about the existing licences for exploration and production of hydrocarbons and licensees.

The information is available, free of charge, through the directorate and on the directorate's website www.jardfeingi.fo.

5 Describe the general legal system in your country.

As a part of the Danish Common Community, which comprises Denmark, Greenland and the Faroe Islands, the Faroe Islands is an integral part of the Danish Constitution and the Danish legal system. However, in 1948, the Danish parliament passed the Faroese Home Rule Act and the Faroe Islands was given a special, self-governed status within the Danish Common Community. The Home Rule Act constitutes the legal framework for the mandate and the conduct of the Faroese Home Rule authorities, including the Faroese Parliament and the Faroese government, and lays down detailed rules for the gradual assumption by the Faroese of responsibility for a number of policy areas.

The Faroese legal system is a civil law system based on legislation created and adopted by the Parliament. Domestic judgments can be enforced through the Faroese Enforcement Court. As the Brussels I Regulation does not apply in the Faroe Islands, foreign judgments are not recognised nor enforceable. The Faroese Act on Civil Law does not regulate the recognition or the enforceability of foreign judgments. Foreign arbitral awards are recognised in the Faroe Islands if recognition of the award is not evidently incompatible with the Faroese legal system. Arbitral awards in commercial disputes are recognised in the Faroe Islands, if the ruling of the award has been given in a country that has adopted the New York Convention of 10 June 1958. If an arbitral award is recognised in the Faroe Islands, it can be enforced through the Faroese enforcement court.

The UN Anti-corruption Convention and the the OECD Anti-bribery Convention does not apply to the Faroe Islands. Under Faroese criminal law, active bribery of persons exercising a public office or function is a criminal offence under section 122 of the Faroese Criminal Act. The maximum punishment is three years' imprisonment. Active and passive bribery in general is a criminal offence under section 299. The maximum punishment is one year and six months' imprisonment. The anti-bribery regulation is generally well enforced by the Faroese police and courts.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The statutory legal framework for the Faroese oil sector is the Hydrocarbon Activities Act (1998).

In December 1992, an agreement was made between the Danish government and the Faroese government for the Faroese Home Rule authorities to take over the rights to natural resources in the subsoil and bedrock in and around the Faroe Islands. From then on it has been the Faroe Islands that, independent of Denmark, has had the legislative and the administrative authority over the area of exploration and production of hydrocarbons. In 1993, a hydrocarbon planning commission was appointed by the Faroese government. The work of the commission resulted in the passing of the Act of 21 October 1993 on Preliminary Surveys. Another four years passed until the draft bill on the Hydrocarbon Activities Act was submitted to the Faroese parliament. On 16 March 1998, the Faroese parliament passed the Hydrocarbon Activities Act.

The Hydrocarbon Activities Act provides the framework, whereas adaptations and more detailed regulation are issued by the Minister of Trade and Industry. Pursuant to the Hydrocarbon Activities Act, the government has established:

- Executive Order of 8 March 2001 on reimbursement of expenses in connection with hydrocarbon activities;
- Executive Order of 8 March 2001 on Health, Safety and the Environment during the exploration phase of hydrocarbon activities; and
- Executive Order of 20 November 2003 on geological and geophysical matters in connection with approval of deep drilling.

Pursuant to the Hydrocarbon Activities Act, prior to inviting applications, the areas to be offered for licensing and the general terms and conditions of the offered licences must be fixed in a parliamentary act. The explanatory notes to the parliamentary act must include an assessment of the possible impact of the hydrocarbon activities in respect of, inter alia, the fishing industry, the environment and the economy. The parliamentary acts on the first, second and third rounds were passed by the Faroese parliament on 8 February 2000, 17 May 2004 and 28 May 2008, respectively.

The Faroese government grants licences with the exclusive right for exploration and production of hydrocarbons within a defined area and subject to specific terms and conditions. Separate licences may not be granted for exploration and production, respectively. Prior to the granting of such licences, the government invites applications in a publicly-announced licensing round.

It is not possible to lease mineral rights from the state. Leasing or farming of mineral rights from a concessionary is subject to a case-by-case approval by the Minister.

There is no regulation governing when, where or how much oil may be produced.

The Hydrocarbon Activities Act stipulates that the licensee must obtain a specific environmental permit or approval before undertaking any particular operation. Moreover, it can be required that the licensee, prior to the granting of the licence, has to submit an environmental impact assessment of the contemplated activities. Rules as to the approval are specified in executive orders established pursuant to the Marine Environmental Act (2005). The Marine Environmental Act is administered by the Minister of the Interior through the Faroese Environmental Agency. The affected public authorities and organisations must be given an opportunity to express their opinion on the environmental impact assessment prior to the approval of activities.

Further, the Hydrocarbon Activities Act stipulates that production activities and drilling activities may only take place following a prior approval by the Faroese government (the Faroese Earth and Energy Directorate) of equipment, programme and mode of operation. Executive Order of 8 March 2001 on Health, Safety and the Environment during the exploration phase of hydrocarbon activities contains further regulation of drilling activities. The Faroese Earth and Energy Directorate monitors production and drilling activities.

There is not yet any production of oil in the Faroe Islands. There is therefore not yet any specific regulation regarding different production methods. Further, unconventional production methods are not relevant in the Faroe Islands.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

To the extent necessary, the Faroese government may permit the expropriation of private property with a view to activities comprised by the Hydrocarbon Activities Act. The expropriation shall take place subject to the provisions of the Expropriations Act (1881). As prescribed by the Act, the purpose of the expropriation has to be deemed to be in the public interest.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The governmental policy for the oil sector is exercised by the Minister of Trade and Industry through the Faroese Earth and Energy Directorate.

The Faroese Earth and Energy Directorate is responsible for all administrative tasks related to oil exploration and production activities in the Faroe Islands.

The administrative tasks include communication with foreign and Faroese survey and oil companies, and with Faroese ministries and other public institutions responsible for tasks related to the oil activities.

Further, specific matters in relation to the environment and competition regulation are governed by the Faroese Environmental Agency and the Competition Authority, respectively.

There is no state oil company in the Faroese Islands.

9 What government body maintains oil production, export and import statistics?

Statistics on oil production, export and import are maintained by Statistics Faroe Islands, which is an independent institution under the Faroese Ministry of Finance.

The Faroese Earth and Energy Directorate is also responsible for compiling all information provided about the subsoil in the course of activities comprised by the Hydrocarbon Activities Act.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

All oil reservoirs are the property of the Faroe Islands and may only become subject to prospecting, exploration or production by any third party by virtue of a licence granted by the Faroese government in accordance with the Hydrocarbon Activities Act.

There are no onshore hydrocarbon activities in the Faroe Islands and no such activities are expected in the future. Therefore no mineral rights on private lands are involved.

Activities regarding minerals other than hydrocarbons are covered by the Danish Act on Raw Materials in the Subsoil (1950). According to the Act, all raw materials in the subsoil not commercially explored before 1932 are the property of the state of Denmark and may only become subject to prospecting, exploration and production by any third party by virtue of a licence granted by the authorities. There is some legal uncertainty as to the scope of the 1950 Act, since certain mining activities have for many years been carried out on the Faroe Islands, which have always been considered a special Faroese sphere of competence and are consequently not covered by the 1950 Act.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Up to April 2014, only offshore oil exploration activities have been commenced. Oil production has not yet commenced (see question 1).

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The governmental policy for the oil sector is exercised by the Minister of Trade and Industry through the Faroese Earth and Energy Directorate.

The Faroese government grants licences with the exclusive right for and production of hydrocarbons within a defined area and subject to specific terms and conditions. Separate licences may not be granted for exploration and production. Prior to the granting of such licences, the government invites applicants in a publicly-announced licensing round. Exploration and production activities may only take place by virtue of a licence granted by the Faroese government.

Licences for exploration and production of hydrocarbons are granted following a public notice inviting applicants to a ‘licensing round’.

In 2010, an amendment to the Hydrocarbon Activities Act was passed by the Faroese Parliament establishing the possibility to apply for a licence for exploration and production of hydrocarbons through an open door procedure. In accordance with the new open door procedure, companies may apply for a licence within the areas comprised by the first, second and third licensing rounds without prior invitation for applications. The Faroese authorities make such applications public and other companies are invited to apply for the licence within 90 days. The licence application fee for a licence to explore and exploit hydrocarbons was 50,000 kroner in the third licence round.

Another procedure is the neighbouring block procedure. This procedure may be used in situations where an accumulation or a potential discovery already licensed extends into an unlicensed area. In these situations, the most commercially viable solution may be to explore the border-straddling accumulation in connection with the already licensed accumulation.

A prospecting licence gives the licensee the right to perform various geological surveys. The cost of a prospecting licence is 75,000 kroner and, additionally, 10,000 kroner is charged for the processing of each prospecting licence application. The application can be submitted by regular mail or email.

The government may also reissue a licence for which all possibilities of extension have been exhausted, but where it has not been possible to fully exploit the accumulation of hydrocarbons. Licences may only be granted to applicants who are considered to have the requisite expertise, experience, resources and financial capacity.

In determining who will be granted a licence, the Faroese government is to have regard to the extent to which the Faroese society will gain insight into and benefit from the activities carried out by the applicant pursuant to a licence.

In the third licensing round, the award criteria included the geological understanding and the extent of the work commitments that the applicant was willing to undertake to thoroughly investigate the prospectivity and to explore for hydrocarbons in the area to be covered by a licence, and whether the licensee was committed to drill exploration wells. Further, the award criteria included to what extent the applicants were willing to commit to developing Faroese qualifications and to secure genuine opportunities for Faroese participation in the hydrocarbon activities.

After a public notice inviting applications, the Faroese government may decide not to grant any licences on the basis of the applications received.

In general, the time frame for the authorities handling an application may vary from case to case.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The Hydrocarbon Activities Act does not contain provisions on the rights of the Faroese government to participate in licences issued according to the Act. So far the Faroese government has not and does not participate in any licences.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

The royalties are laid down in the model licences for the respective licensing rounds. In the third licensing round covering offshore areas of the Faroe Islands, the royalty was a fixed production royalty of 2 per cent. The royalty is calculated on the basis of the gross price of hydrocarbons produced. No onshore areas have been offered for licensing.

No tax stabilisation measures apply to licensees subject to the Hydrocarbon Tax Act, and licensees are generally not protected against future increases in the Faroese corporate tax rate.

15 What is the customary duration of oil leases, concessions or licences?

A granted licence comprises the right to produce hydrocarbons in the defined area if discoveries are made in the exploration period. A licence may be issued with a view to exploration for a term of up to 12 years, which may be prolonged by up to two years at a time. The total term of exploration may not exceed 16 years. Thereafter, the licensee may be entitled to an extension of the licence with a view to production for a period to be fixed in the licence, which may not exceed 30 years.

16 For offshore production, how far seaward does the regulatory regime extend?

The Hydrocarbon Activities Act applies to prospecting, exploration, production and pipeline transportation of hydrocarbons in the land territory and territorial sea of the Faroe Islands and on the Faroese continental shelf.

In 1999, an agreement between the UK and Denmark and the Faroe Islands was concluded regarding the final maritime delimitation in the area between the Faroe Islands and the UK.

In 2010, the governments of Denmark and the Faroe Islands, in accordance with the United Nations Convention on the Law of the Sea, submitted information on the establishment of the outer limits of the continental shelf beyond 200 nautical miles regarding the southern continental shelf of the Faroe Islands to the Commission on the limits of the continental shelf. The final establishment of the outer limits will be agreed with the adjacent coastal states.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

The Hydrocarbon Activities Act applies to both onshore and offshore activities.

The Act applies to condensate, natural gas and other hydrocarbons found naturally in the subsoil that can be produced in a gaseous or liquid form. So far, only oil and gas exploration activities have been carried out.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

The Hydrocarbon Activities Act does not contain provisions on which corporate entities may be granted a licence under the Act. However the Act does contain provisions that require that licence holders have the requisite expertise, experience, resources and financial capacity to meet their obligations under a licence. According to the model licence, for the third licensing round licensees that did not have a subsidiary company or branch registered in the Faroe Islands should establish a subsidiary company or a branch no later than three months after the licence was granted. Registration of subsidiaries and branches follows a relatively simple, swift and low cost procedure.

See question 12 for a further description of the application procedure.

19 What is the legal regime for joint ventures?

Both individual companies and groups of companies may apply for licences. Out of the eight licences in force, six are held by a joint venture of oil companies. The companies participating in a joint venture share the economic risk and pay expenses according to the joint operation agreement. The joint operation agreements must be approved by the Faroese government.

The formation and organisation of joint ventures is not governed by any statutory regulation under Faroese law.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Where an accumulation of hydrocarbons extends into more than one licensed area, the relevant licensees must coordinate exploration and production activities. Agreements in this respect must be approved by the Faroese government.

Where the relevant licensees fail to come to an agreement within a reasonable time, the Faroese government may order the coordination of activities and lay down applicable terms and conditions for the coordination.

Where an accumulation of hydrocarbons extends into the territory of another country, the Faroese government may order that the holder of the licence of the Faroese part of the accumulation must take part in coordination with the other country, provided that an agreement has been reached between the Faroese government and the relevant country.

As far as possible, it is left to the relevant licensees to negotiate the details of such a coordination agreement.

21 Is there any limit on a party's liability under a licence, contract or concession?

The Hydrocarbon Activities Act and the model licence for the third licensing round contain no provisions on limitation of liability. If a licence is granted to a consortium, each member is jointly and severally liable.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

According to the model licence for the third licensing round, licensees are obliged to provide evidence of sufficient financial security within 30 days of the issuance of the licence in an amount and of a kind acceptable to the Minister, including a comfort letter guarantee from the parent company, unless the Minister exempts the licensee from this requirement.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

In order to ensure that Faroese companies can participate in hydrocarbon exploration activities, the Hydrocarbon Activities Act stipulates that all transport related to hydrocarbon activities to and from the Faroese region shall take place via Faroese ports or the Faroese international airport.

In the model licence for the third licensing round, the licensees are obligated to provide Faroese companies genuine opportunities, in free and open competition with others, to obtain contracts to provide goods and services in connection with the performance of the activities stipulated by the licence.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

See the answer to question 23.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Government consent by the Minister of Trade and Industry is required if a company wants to transfer its interest in a licence, concession or production sharing agreement. Change of control requires similar approval. The transfer of interest in a licence may be conditional on the government's approval or approval may be requested beforehand. Transfer of interests in a licence (direct or indirect) requires documentation for the financial and technical capacities of the new licensee (or group of licensees). The timetable may vary but the process will usually not exceed a few weeks.

The costs may vary. According to Executive Order No. 34 on reimbursement of expenses in connection with hydrocarbon activities, licensees will pay the expenses incurred by the authorities in connection with the administration of matters regarding licences and approvals, etc. The authorities may charge an hourly rate of 740 kroner for work related to administrating the Act. According to the Hydrocarbon Activities Act and the model licence for the third licensing round no pre-emptive rights are reserved for the government.

26 Is government consent required for a change of operator?

Change of operator under a licence issued according to the Hydrocarbon Activities Act requires consent from the Faroese government.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

The Hydrocarbon Activities Act and the model licence for the third licensing round contain no provisions on specific fees or taxes on a transfer or change of control.

Decommissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

To date, there has been no production of hydrocarbons and, as yet, no plans to establish hydrocarbon facilities in the Faroe Islands. The Hydrocarbon Activities Act provides framework provisions on decommissioning in accordance with which cessation of operations may only take place following prior approval by the Faroese government. The Hydrocarbon Activities Act requires licensees to draft a decommissioning plan to be submitted for the approval of the Faroese government, before cessation of the hydrocarbon activities. The decommissioning plan shall include provisions for the financing of the decommissioning. The decommissioning plan shall be submitted no later than two years before the cessation of the hydrocarbon activities. There is no detailed regulation for abandonment and decommissioning yet.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

Neither the Hydrocarbon Activities Act nor the model licence for the third licensing round contains specific provisions regarding security deposits or specific amounts required. Deposits and conditions may vary on a case-by-case basis depending on the size and character of the specific facility.

The Faroese government may at any time order the licensee to substantiate its ability to finance the implementation of a decommissioning plan or to furnish requisite security in order to do so, if the Faroese government has reason to presume that the licensee does not have the necessary financial resources.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Pursuant to the Hydrocarbon Activities Act, any establishment or operation of pipeline facilities in the land territory or the territorial sea may only take place pursuant to a licence granted in accordance with the Act. The government is to make sure that the pipelines do not cause inconvenience, especially to oil, gas and fishing operations in the shelf area. At present, there are no oil pipeline or transportation facilities in the Faroe Islands. Establishment of pipelines is subject to approval by the Faroese Earth and Energy Directorate and the Faroese Environmental Agency.

The Faroese Maritime Authority regulates the area of marine vessels. The area is mainly regulated by the Faroese Merchant Shipping Act (1985).

In respect of road transport, the international ADR rules have not yet come into force in the Faroe Islands. The area of road transportation of oil is overseen by the Faroese Vehicle Inspection and the Faroese Fire Inspection mainly in pursuance of the Fire Safety Act (1986) and detailed orders and guidelines.

There is no transportation by rail in the Faroe Islands.

In order to ensure that Faroese companies can participate in hydrocarbon exploration activities, the Hydrocarbon Activities Act stipulates that all transport related to hydrocarbon activities to and from the Faroese region shall take place via Faroese ports or the Faroese international airport.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

In accordance with the Faroese Merchant Shipping Act hazardous goods are required to be marked as 'hazardous'. Further, ships above 400 gross tonnes must have an international anti-fouling certificate or a statement of compliance.

All vehicles are approved by the Faroese Vehicle Inspection. Vehicles used for oil transportation are also subject to approval by the Faroese Fire Inspection. Since the Faroe Islands consist of a number of islands and vehicles are often transported by ship between the different islands, vehicles used for transportation of oil must meet special requirements as to mooring. Further, vehicles used for transportation of oil must also meet special requirements as to driving in tunnels. There are no special training requirements for chauffeurs transporting oil.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

According to the Hydrocarbon Activities Act, offshore installations as well as onshore installations and facilities for the production of hydrocarbons may only be established by a licensee following the prior approval by the Faroese government of a field development plan.

In 2001, the Faroese government issued an executive order concerning health, safety and the environment during the exploration phase of the hydrocarbon activities. The executive order includes rules on management of hydrocarbon activities, risk and emergency response analyses, technical requirements for offshore installations, working environment and drilling and well-related equipment, operations on offshore installations and requirements for information and documentation regarding the implementation of the requirements in the executive order.

The operator is required to lay down management and control systems regarding health, safety and environment. Further, the operator is required to conduct risk and emergency response analyses and to ensure that the risk level does not exceed an acceptable level of risk. The analyses are to identify all relevant risks, evaluate these risks against the defined risk acceptance criteria, identify risk reducing measures and assess the general emergency response.

The operator is required to develop a plan for positioning the offshore installation including, if necessary, a mooring plan and underwater operations for positioning subsea equipment.

The Faroese government supervises compliance with the provisions in the executive order concerning health, safety and the environment.

Transgression of the requirements of the executive order or failure to comply with orders laid down in the executive order are punishable by a fine or simple detention. Employers transgressing the provisions of the executive order may be fined, even though the transgression is not attributable to the employer's wilful act or gross negligence. Public limited companies, private limited companies and cooperative societies may as such become liable to a fine for transgressions.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

At present there is no regulation regarding health, safety and environmental requirements applicable to oil and oil product composition, but such regulation may be established in pursuance of the present legislation. Under the Environmental Protection Act and Marine Environment Act, the authorities can require that pollution is kept at a minimum level.

Generally the Faroese authorities apply principles similar to those applicable in Denmark with regard to environmental requirements.

The Faroese Environmental Agency is responsible for the regulation of health, safety and environmental requirements for oil products.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

In general, the standard legislation on labour is also applicable to the oil sector.

The rules in the executive order concerning health, safety and the environment during the exploration phase of the hydrocarbon activities regarding working environment replace the rules of the Faroese Employment Protection Act, based on a lex specialis point of view. Rules are laid down in the executive order regarding working time, rest periods, personal protection equipment and general rules on the working environment on offshore installations such as reduction of noise, health service and emergency medical response. However, work executed aboard marine vessels must be in compliance with the Faroese Employment Protection Act, which is administered by the Occupational Safety and Health Office.

With regard to the use of Faroese manpower, a provision may be included in the licence or in the general regulations requiring the licensee to recruit Faroese manpower to the extent possible. Such a provision is included in the model licence for the third licensing round. Further, the licensee may be required to report to the public authorities on the number of employees, including the number of Faroese employees and on the measures taken by the licensee to train and increase the qualifications of his or her workforce.

Foreign nationals must obtain a work permit to work in the Faroe Islands. Citizens of Finland, Iceland, Norway and Sweden are not required to obtain a work permit in order to work in the Faroe Islands. Since the Faroe Islands is part of the Kingdom of Denmark, Danish citizens may also work in the Faroe Islands without a work permit. The Faroe Islands are not a member of the EU, so EU citizens must also obtain a work permit in accordance with the rules of the Aliens Act. Work permits are granted on a case-by-case basis.

A foreign national working in the Faroe Islands without the necessary work permit may face expulsion from the Faroe Islands. The foreign national and the Faroese employer may also risk being fined.

In the model licence for the third licensing round, the licensees agree to provide employment opportunities for inhabitants in the Faroe Islands and to endeavour to offer Faroese educational and research institutions, and the Faroese business community in general, the opportunity to participate in such research and development projects that may be undertaken in performance of the activities stipulated in the licence.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The fiscal regime is divided into a corporate tax on production income and a special tax on particularly high production income.

The corporate tax rate is 27 per cent, whereas the corporate tax rate for companies other than oil companies is 18 per cent. In addition, if oil companies generate a particularly high income, they are subject to a special tax. The special tax consists of three levels: if the rate of return on investment and development cost is below 20 per cent, no special tax is payable; if the rate of return is between 20 per cent and 25 per cent, the special tax rate is levied at 10 per cent; and if the rate of return exceeds 30 per cent, the special tax rate is levied at 40 per cent, which is the highest rate payable.

Taxpayers subject to the Hydrocarbon Tax Act are assessed by the Assessment Council. The Assessment Council may, under the Hydrocarbon Tax Administration Act (2000), authorise the Faroese Customs and Tax Administration to exercise the authority of the Assessment Council under the Hydrocarbon Tax Act.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

At present, there is no mandatory price-setting regime for crude oil or crude oil products in the Faroe Islands.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Faroese Competition Council enforces the competition regulation in the Faroe Islands. Competition, market practice and merger control are generally governed by the Faroese Competition Act. The Competition Authority serves as secretariat to the Council and takes care of the day-to-day administration of the Act on behalf of the Competition Council. There is no sector-specific supervisory authority for the oil sector.

The Competition Council's main task is to react if companies holding a dominant position in their respective relevant markets take unfair advantage of their market position. The underlying principle is that the consumers should enjoy fair, uniform and transparent prices and conditions of supply.

Decisions made by the Faroese Competition Council may be appealed to the Competition Appeals Tribunal. Decisions cannot be brought before the courts until the Competition Appeals Tribunal has made its decision.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

Upon notification from an undertaking, the Competition Council may declare that according to the facts in its possession, an agreement, decision or concerted practice shall be outside the scope of the prohibition against certain anti-competitive agreements.

Decisions regarding exemptions shall, furthermore, specify the period for which the exemption is effective, and may be granted on specific terms.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

The Faroe Islands is not a member of the EU and is not subject to EU legislation. The Faroe Islands is a member, in some cases through the Kingdom of Denmark, of a number of international organisations.

Update and trends

In 2014, four licences were relinquished. Licence 009 was relinquished. The licensees were Statoil (operator), ExxonMobil and OMV. The licence acreage has been explored without encouraging the licence holders to continue the exploration. In licence 006 two exploration wells have been drilled – well 6104/21-1, Brugdan, was drilled in 2006 and well 6104/21-2, Brugdan ll, was drilled in 2014. The wells were both dry. Consequently, licence 006 was relinquished. The licensees were Statoil (operator), ExxonMobil, OMV and Atlantic Petroleum. Under licence 011 and licence 016 geological works have been conducted, but no wells have been drilled under these licences. Licence 011 was relinquished. The licensees were Statoil (operator), ExxonMobil and OMV. Licence 016 was relinquished. The licensees were Statoil (operator), ExxonMobil, OMV and Atlantic Petroleum. As a result of the relinquished licences, Atlantic Petroleum and ExxonMobil no longer participate in any exploration licences on the Faroese continental shelf.

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The international shelf boundary between the Faroe Islands and the United Kingdom was finally defined in an agreement signed in May 1999.

In 2010, the governments of Denmark and the Faroe Islands in accordance with the United Nations Convention on the Law of the Sea submitted information on the establishment of the outer limits of the continental shelf beyond 200 nautical miles regarding the southern continental shelf of the Faroe Islands to the Commission on the limits of the continental shelf. The final establishment of the outer limits will be agreed with the adjacent coastal states.

The Faroe Islands is covered by Denmark's membership of the World Trade Organization.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Licensees who do not have a subsidiary company or a branch registered in the Faroe Islands must establish a subsidiary company or a branch no later than three months after the licence has been granted.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

No specific rules apply to cross-border sales or deliveries of crude oil or crude oil products.

France

Denis Borgia

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

In France, the Paris basin, with 54 per cent of the total production, and the Aquitaine region (near Bordeaux), with 45 per cent, are the main productive areas, with a combined production in 2013 of 28,000 bbl/d (rounded). Apart from some seismics, there has been no offshore exploration since 2005. Production remains exclusively onshore, the main producers being Vermilion REP SAS, a subsidiary of the Canadian entity Vermilion Energy, with roughly 95 per cent of the total production; Lundin, a subsidiary of the Swedish holding Lundin petroleum; Geopetrol; and Petrorep. The total proved reserves amounted in 2013 to 89 million BOE (excluding shales), representing roughly 0.07 per cent of the world reserves. An excellent pipeline network supplies refineries from the ports of Le Havre, Rouen, Marseille, Donges and Dunkirk. Refined products are mainly transported by truck to the 8,000 service stations in the country.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Oil production in France remains stable at 1 per cent of the total national petroleum consumption. The remaining 99 per cent is, therefore, imported from Africa (29 per cent), eastern European countries (29 per cent), the Middle East (22 per cent) and the North Sea (20 per cent). Country refineries handle all domestic requirements (except for gasoil), which have been stable in the past 12 years at around 1.7 million bbl/d. Petroleum accounts for 31 per cent of the national energy needs, compared with 15 per cent for gas and 44 per cent for electricity. For the time being, France remains a poor producer, compared to other EU countries (especially Germany), in terms of non-conventional sources of energy.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The national energy policy, supervised by the Ministry of the Environment, is based on three main goals: protecting the supply (energy considered as a strategic vector for the national economy), reducing dependence on fossil energy by increasing the development of alternative energy production and strengthening the liberalisation of the electricity market.

4 Is there an official, publicly available register for licences and licensees?

The Bureau of Energy and Hydrocarbons (a division of the Ministry of the Environment) provides public access to a complete list of all existing titles. The list and location of all titles in force can be freely consulted on the following link: www.developpement-durable.gouv.fr/Carte-des-titres-miniers-d.html.

5 Describe the general legal system in your country.

The French legal system is based on civil law. The courts are divided into many jurisdictions, each of them having jurisdiction on specific areas of law: commercial courts on commercial litigations, administrative courts on disputes between citizens or corporations and the administration and civil courts for disputes relating to civil rights in general. Though the rule of law is widely respected, there exists a wide discrepancy from one place to another concerning the quality of the judges and the overall competency of jurisdictions, which can sometimes provoke embarrassing overlapping between procedures concerning titles and relations with landowners. In addition, delays for delivery of administrative authorisations are very often too long, it is not rare to see the administration extending by many months the legal delays for delivery or the titles or their prolongation. Politics plays a large part in the process for the delivery of titles and work authorisations. The law provides pressure groups with the right to contest the authorisations and titles that are delivered. Foreign decisions and arbitration awards are easily enforced by the local jurisdictions, though the delays from the beginning to the end of a procedure can last as long as five years. Anti-corruption measures are similar to those in common law jurisdictions. Anti-corruption regulation is governed by both French and European rules, which considers both that the crude oil market is worldwide, and that the case law is envisaging merger and acquisitions from a global perspective. It means concretely that any foreign investor would be allowed to acquire any French producing company, subject, however, since the adoption of a new regulation in 2014 concerning foreign investments, to the eventual prior authorisation of the Economy Ministry. (The regulation is not clear as to whether this authorisation is required for crude oil mining companies; this shall be ruled in may 2015, pursuant to a demand to the Ministry.) The anti-bribery regime is as well governed by both French and European measures, which interdict both passive and active corruption of officials in the exercise of their duties. Concretely these regimes prohibit any offer or demand of any kind, to any civil servant or politician, which is destined to obtain an advantage or to prevent them from executing their duties in the evaluation of a file or the allocation of any demand.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The Mining Code and its sub-regulations constitute the main legal frame governing exploration and production. Additionally, the Code for the Protection of the Environment is a major piece of regulation for all mining activities. It should be noted that pursuant to a law that was adopted in 2011, hydraulic fracturing (fracking) is totally prohibited.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

Like any private property, a licensee's interest can be expropriated if the administration estimates that there is legitimate public interest to do so, with the specification that there can be no expropriation without payment of the fair market value of the interests that are expropriated. This protection is recognised both by French law and the European declaration for human rights protection (protocol 1).

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

Both the Ministry of Finance and the Ministry of the Environment govern the mining industry, the first supervising, essentially, the royalties and other taxes and the second supervising delivery of titles and control of operations. Mining titles are issued by the government after a consultation process beginning with local authorities and ending with specialised administrative bodies, among which are the general council for mines and the hydrocarbons office, which deliver a decisive decision. Conformity of the day-to-day operations with environmental obligations is controlled by the regional directorate for the environment. There is no state company.

9 What government body maintains oil production, export and import statistics?

The Ministry of the Environment, through its hydrocarbons exploration and production board, is in charge of maintaining oil production, export and import statistics.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

Oil and gas reservoirs do not belong to the surface owner. The owner of an exploration permit is the sole person authorised to search for reservoirs in the specific area covered by its permit, whether the land included in this area is private or public. The permit owner will be the sole owner of reservoirs that it discovers, and subject to limitations regarding the preservation of the environment and the protection of existing constructions, it has the right to obtain on the surface, by agreement or by an order from the administration, all servitudes that are required for the construction of its facilities, including well-drilling facilities. Indemnities are paid to the landowners in consideration of the nuisance resulting from the mining operations. The permit owner has an exclusive right to ask for a renewable 25-year mining concession in the permit area to exploit a commercial discovery. The concession decree can fix a severance payment in favour of the surface owner.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

While some offshore exploration has been conducted in recent years by the Canadian company Vermilion, production remains exclusively onshore. There is no limit to the exploration and production rights other than the protection of the environment and existing constructions, although even in the latter case the permit owner can obtain the expropriation of a private property that is essential for its operations.

Military properties can have pipelines or wells on their land, and reservoirs located underground beneath such properties can be exploited, insofar as those installations or such exploitation activities do not obstruct the military use of such properties.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The Ministry of the Environment manages the exploration and production activities and the granting of permits and concessions. The legislation prescribes a concession regime, which is governed by the preliminary issue of exploration permits in areas that are free from pre-existing mining titles. The regime is essentially based on private exploration and production, although the government is allowed by legislation to expropriate, own and exploit mines.

A candidate for a title must petition the Ministry of the Environment and provide information evidencing its technical and financial capacities. For an exploration permit, the file shall integrate a work programme over a three-year period with investments that are sufficiently credible to convince the Ministry that the potential of the zone will be duly explored. For a concession, the petitioner must confirm its financial and technical capacities to optimise the production of the field.

The time frame for titles delivery generally varies between 15 to 18 months from the demand and the publication of the title delivery in the Official Gazette. Prorogation of titles will last as long. Demands for concessions can be up to two years.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The government does not have a direct right pursuant to the law to integrate a licence, although it can contractually agree with a petitioner to do so. The government does not operate any field and is not destined to do so. There are no mandatory carry requirements.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

A progressive royalty must be paid for onshore production, based on a percentage of the value of the production, calculated as follows:
- for crude oil:
  - zero to 50,000 tons – zero per cent;
  - 50,000 to 100,000 tons – 6 per cent;
  - 100,000 to 300,000 tons – 9 per cent; and
  - 300,000 tons and plus – 12 per cent; and
- for gas:
  - 300,000m^2 and less – zero per cent; and
  - over 300,000m^2 – 5 per cent.

There are no royalties on offshore production, except for mines located offshore of the French islands of Saint-Pierre and Miquelon, near the Canadian province of Newfoundland.

A local tax is paid to cities and departments, which amounts to €563.40 per 100 metric tonnes of crude oil for production extracted from mines operated since 1 January 1992 (€670.90 for gas), and €1,856.70 per 100 metric tonnes for production extracted from mines operated before 1 January 1992 for crude oil (€162.40/m^3 for gas). The rates increases for 2014 are not yet published. The tax administration generally enacts the new rates for the current year's production by the end of such year or the beginning of the next year. That means that producers shall provision the amount to be paid on the basis of the previous year's rates plus inflation.

Apart from company tax (described in question 35) and royalties, the other taxes that must be paid are real estate tax and added value contribution, which are paid yearly to the local administration (cities).

Real estate tax is a percentage determined by the local authority (in general, it varies from 2 per cent to 30 per cent), and is calculated upon 70 per cent of the value of the real estate assets.

Added value contribution is calculated upon 85 per cent of the revenues for companies with a revenue of up to €7.6 million, and upon 80 per cent of the revenues for companies with revenues exceeding €7.6 million. Its calculation can be summed up as follows:
- zero per cent on revenues of up to €500,000;
- 0.5 per cent on revenues of up to €3 million;
- between 0.5 per cent and 1.4 per cent on revenues of between €3 million and €10 million;
- between 1.4 per cent and 1.5 per cent on revenues of between €10 million and €50 million; and
- 1.5 per cent on revenues exceeding €50 million.

There are no tax stabilisation measures in force.

15 What is the customary duration of oil leases, concessions or licences?

There are two kinds of titles: the exploration permit and the concession. Subject to the previous existence of mining titles in the relevant area, any person may request a permit by sending a permit petition to the ministry in charge of the environment. The exploration permit is issued for five years after a 30-day competition period running from the publication of the petition in the official gazettes of France and the European Union.

The permit is issued if the petitioner can prove its technical and financial capacity to complete a programme of work before expiry of the permit, which can be renewed twice (without competition) for successive additional terms varying between three and five years, with a reduction of the area covered by the permit by 50 per cent for the first renewal and 25 per cent for the second renewal. A 25-year concession can be issued exclusively to the permit owner if it proves the existence of a commercial discovery. Delays in the issue and renewal of concessions can be as long as two years; however, the permit owner is authorised to produce and sell its products in the meantime. Concessions are renewable for new terms of 25 years.

16 For offshore production, how far seaward does the regulatory regime extend?

For offshore production the regulatory regime applies up to the limit of the economic zone that is under the control of the French government, which is 200 nautical miles from the coast.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

The main differences between onshore and offshore titles concern the royalties, which (apart from the exception mentioned in question 14) are paid only for onshore production. In addition, offshore exploration and production are submitted to additional constraints designed to protect the environment.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Any company duly registered in France can ask for the delivery of a permit if it can prove its technical and financial capacity to conduct a work programme that shall be completed before the expiry of the permit, and thereafter to exploit commercial discoveries subject to environmental regulation. Apart from EU companies, foreign companies shall implement a European subsidiary to proceed with any French activity. EU companies must simply register at the commercial court of their French office address. Creation of a European subsidiary generally takes no more than two weeks, and can be as quick as two days in some European countries.

Technical capacity will be recognised if the applicant proves:
- that it employs competent oil and gas engineers;
- that it conducted previous exploration work in accordance with applicable regulations; and
- that it has a sufficient workforce and technical support to execute its work programme, including all the relevant exploration work required to ascertain the potential of an area pursuant to indicative geological data.

Financial capacity will be recognised if the applicant evidences good financial health over the previous three-year period, the availability of guarantees ensuring its capacity to execute the obligations attached to the mining title and that it is not subject to ongoing claims that may jeopardise its financial capacity, or that it benefits from other sufficient guarantees to avoid any difficulty in meeting its obligations.

Once it is issued its concession, the operator shall deploy operating methods that will permit production to be maintained at the highest possible capacity.

Incorporating a company in France takes no longer than two weeks. Cost for incorporating generally does not exceed €2,000.

19 What is the legal regime for joint ventures?

Pursuant to the Mining Code, joint ventures are governed by a joint operating agreement, appointing a single operator. Agreements that are used are the same as those generally used in the industry. Each partner contributes to the exploration expenses in proportion to its share, and is the owner of eventual production in the same proportion. Budgets are established and revised yearly for the following three years.

A partner cannot avoid exploration or operating current expenses, while the usual non-participant clauses govern the development expenses.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Unitisation is governed by the Mining Code for domestic reservoirs. If two permits have been issued for an area that is proven to contain a single reservoir, such permits may be merged upon petition by any owner. International unitisation is not a frequent concern for French production, except for the French islands of Saint-Pierre and Miquelon near the Canadian province of Newfoundland. A unitisation treaty was executed between France and Canada on 17 May 2005.

21 Is there any limit on a party's liability under a licence, contract or concession?

There is no limit concerning the liability of a party owning a licence regarding the remediation of sites. A guarantee shall be issued in favour of the administration, upon delivery of the title, by the shareholders of the licensee. The liability is joint and several between the licensee and its shareholders as a consequence of such a guarantee.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Parental guarantees are systematically required. In addition to the usual parental guarantee that is required pursuant to the Mining Code, parent companies will need to issue a bond of variable value (generally between €2 million and €5 million) to guarantee the remediation of certain sites (mainly storage plants).

The parental guarantees must be delivered by each and every parent company, from the immediate controlling company to the ultimate indirect control holding. The guarantee covers all and any liability assumed by the licensee for damages caused by its operations or the costs for site remediation.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

There is no specific requirement for requiring local providers. EU treaties and regulations allow contracting with any European provider. One may contract with foreign providers if required, provided the French labour regulation and the rules for protection of environment are respected.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

There are none; these would be illegal pursuant to European regulation.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Transfer of title is subject to approval from the mining council, which is afforded if a petitioner respects the technical and financial capacities described in question 18. Change in control is subject to approval from the Ministry of the Environment and is governed by the same criteria.

A petition for transfer of title or change in control is sent by letter to the Ministry. For the former it takes roughly 15 months, for the latter between two and four months. Apart from attorneys' fees, there are no additional costs for such demands.

The government has no pre-emptive right on transfers.

26 Is government consent required for a change of operator?

A change of operator is executed pursuant to the same procedure as a change in control (ie, pursuant to a demand to be executed by letter to the Ministry in charge of the environment). The time frame for approval is no longer than four months and attracts no fees. The new operator must prove that it has the necessary technical capacity described in question 18.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

The only applicable tax on a change of control is applied on the sale price of the shares or the price of the assets that were sold. There is no specific tax on the mining title transfer itself.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

Decommissioning and abandonment are governed both by the Mining Code and the Environment Code. Installations shall be completely dismantled and sites cleaned up to the level determined by the administration (the Regional Direction of Environment, called DREAL), which will depend upon the future usage of the site. Holdings will be asked to provide guarantees that their French subsidiaries will respect their obligations regarding commissioning and, more generally, all other obligations resulting from the ownership of the title. Joint venture owners are jointly and severally liable for the execution of obligations related to decommissioning.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

Parent companies will need to issue a bond to guarantee the remediation of certain sites (mainly storage plants). This guarantee must be provided by a bank or an insurance company. It is estimated by the government, and pursuant to the importance of the plant being decommissioned, that the guarantee generally varies between €2 million and €5 million.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

French legislation encourages pipeline transportation of crude oil, an aim that is assisted by a network covering the entire French territory comprising more than 4,000km of pipes. Transnational pipelines are governed by EU regulations. Paris basin production is almost entirely transported by pipeline directly to refineries, while the Aquitaine production is stored in a maritime terminal near Bordeaux and from there transported by sea to refineries. Maritime transportation is governed by the French Maritime Laws, which contain a regulation that is similar to the international maritime laws. Tanker truck transportation is also subject to a set of security rules governing the equipment and the transportation itself, including the itineraries. A prevention plan shall be executed for the inspection and maintenance of flow lines and pipelines. Pipeline, maritime and truck transportation are all supervised by the Ministry of the Environment.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

Pipeline owners are either the operators themselves, which are then subject to Mining Code regulation, or private companies that own the pipes exclusively, which are subject to equivalent specific legislation. Construction authorisations are preceded by a complex procedure, beginning with an official request including evidence of the public utility of the equipment. Such a request is further submitted to a public inquiry. Environmental protection associations can intervene in the inquiry and contest the eventual authorisation in court. Upon administrative authorisation, producers that do not own pipes have the right to connect and transport their crude oil through third-party pipes, in consideration of the payment of fees to the pipe owner. Ships shall respect the International Maritime Organization standards for crude oil transportation as well as the specific requirements of port authorities, including that the ship must be equipped with an inert gas system.

Tanker truck owners shall comply with a detailed set of specifications intended to protect the environment and the security of persons and goods.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

The Mining Code and the Environmental Code regulate the operations of oil-related facilities. Construction and exploitation permits are required from the mining authorities, the Ministry for the Environment and the local administrations for all facilities. In addition, installing facilities on public or private property requires the previous agreement of the landowner or an administrative order in the case of refusal. Maintenance shall be performed in due time pursuant to the mining and environmental regulations.

The Ministry of the Environment is in charge of supervising the compliance of operators with the regulations. Maintenance records shall be kept up to date, and any incident shall be immediately reported to the Ministry of the Environment. Emergency plans shall be implemented upon approval from the Ministry of the Environment and regularly updated. Non-compliance penalties range from fines to permit termination. Criminal condemnation of the director of the operating company can also be pronounced.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

There are no specific rules on the composition of the product. Requirements concerning the composition are intended to measure the volume and to ensure that the product matches the refinery requirements. Pursuant to the regulation the producer shall measure water and sediments, and determine the H_2S concentration for the refinery.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

All labour standards are fully detailed in the French Labour Code, as complemented by specific mining regulations. A complete set of security rules similar to the industry standards governs the execution of work. Petroleum collective agreements also apply to the industry.

The legal maximum for working hours is 35 hours per week, which can cause some problems for drilling programmes, for which derogating authorisations can be obtained from the administration, for work on two 12-hour shifts. Collective representation of workers is completely different from common law countries. Unions can appoint a representative without any vote from the employees. Elections are held once every four years to appoint employees' representatives. Employees' representatives assist their colleagues on all subjects regarding the execution of work, especially for disciplinary matters. An enterprise committee shall be elected when there are more than 50 employees. The employer shall consult such a committee before implementing any modification that might affect the organisation of work or employment. Although the committee's advice is only consultative, the employer cannot proceed with any such modification until this advice has been obtained.

Regulation prohibits any discrimination.

Foreign workers are subject to the same French regulations as local workers, labour legislation being considered a matter of public policy. Foreign workers from European countries have free entry rights to work in France. Workers from non-EU countries will need a visa, which will be provided essentially in three cases: for expatriation of a foreign employee of the same group; for entry of a subcontractor employee; or for entry of a specialised worker operating in a sphere of activity for which local employees are non-existent or unavailable.

The only persons that are authorised to work in France are either EU citizens, or foreign countries' citizens benefiting from a work permit (easily obtained for foreign companies' employees contracting for operations in France). There is no specific training fund for petroleum activities, but many professional formation programmes exist, which are funded through the usual social taxes.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The usual company tax rules apply to petroleum companies. The taxation rate for 2010 is 33.3 per cent of the benefits (36 per cent for companies with revenues exceeding €150 million). For international groups, thin capitalisation rules as well as pricing transfer caps regulate the debt and cash flows. A powerful tax administration is responsible for the application of these rules.

A withholding tax can be applied to transfers between France and a foreign country (other than EU countries) if there is no tax treaty in force. A withholding tax can also apply between EU transfers if the tax authorities estimate that the transfer from France into another European country was executed only as a first step to avoid withholding tax on the money that is further transferred from the other EU country into the foreign country.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

There is no such regime.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

Both European and French legislation regulate competition, trade and merger control. Pursuant to the French Code of commerce, any regrouping shall be previously approved by the French administration if at least two of the merging companies realise a revenue of €50 million in France and €150 million overall or, pursuant to the European union regulation by the European Commission, if at least two of the merging companies realise a revenue of €250 million in Europe and €5 billion worldwide. Case law shows no decision opposing a merger between upstream operators.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

An authorisation petition must be submitted to the French competition authority (or the European Commission (see question 37)) describing the companies that are concerned and their markets, with all relevant documentation enabling the evaluation of the eventual impact of the merger on market competitiveness. The process can last between two and 12 months, depending on the scope of the inquiry decided by the regulatory authority.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Apart from French law, the only relevant EU regulation applying to oil and gas exploration and production is Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

There are no such restrictions. The operations shall be conducted locally by representatives having proved their technical capacities for such operating.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Apart from the transportation regulation already discussed, there are no special cross-border rules. The European free market authorises European companies to market products anywhere in Europe.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The upstream petroleum industry in Ghana has been energised in recent years with the commercial discovery of the Jubilee Field in 2007. The Jubilee Field straddles the Deepwater Tano and West Cape Three Points licences some 70km offshore Ghana and 130km southwest of the port city Takoradi. The Field has estimated recoverable resources of up to 1 billion barrels.

The upstream sector deals mainly with exploration, drilling, production and transportation of crude oil. The downstream sector comprises refining, storage, importation, transportation, distribution and marketing of petroleum products. Both sectors are regulated by a number of laws.

The commercial aspects of Ghana's oil industry relates mainly to the marketing and distribution of crude oil and crude oil products as well as the development and sale of natural gas.

Downstream petroleum business operations have been dominated by indigenous Ghanaian oil marketing companies for several decades. Most of these companies have been dominant players in the bulk storage, transportation and retailing of petroleum products.

The marketing and distribution of oil products is largely in the hands of private oil marketing companies. These include Total, Oando, Engen, Goil and other small private operators. The marketing of Ghana's crude oil entitlement abroad has been awarded to Vitol SA and Cirrus Oil Services after they carried out a marketing process and obtained the best commercial terms for Ghana. They have marketed Ghana's first cargo to Sun International, a subsidiary of Sunoco Inc.

The recent oil discovery has brought to the fore additional investment and business opportunities in the petrochemical and natural gas industry. However, indigenous companies currently lack the required capacity to take advantage of these opportunities.

The development and sale of natural gas is the next major commercial component of the oil sector. Significant quantities of natural gas are expected to be produced with oil from the Jubilee Field. It is estimated that 1,000 cubic feet of gas will be produced with each barrel of oil. This 'associated gas' will be processed to extract natural gas liquids and liquefied petroleum gas (LPG).

At the peak of phase I of the Jubilee production, about 80 to 100 million cubic feet will be available to Ghana. Monthly revenues from the natural gas liquids to be recovered under the project are estimated at more than US$30 million. The Ghana National Petroleum Corporation(GNPC) has so far been managing all aspects of the gas commercialisation initiative, including commercial arrangements, financing and project management.

The National Gas Development Taskforce has also been established to review all aspects of the gas commercialisation project, including its technical, commercial, economic and financing options, and to make recommendations on the most efficient and viable ways of bringing the project to fruition.

The cost of the infrastructure required to commercialise the natural gas from the Jubilee Field has been estimated at over US$1 billion. The project has been delayed.

However, the Gas Development Taskforce has submitted its report to the government for implementation. It is expected that full-scale development and production of gas will be commenced on the basis of the findings of the Gas Development Taskforce.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Approximately 70 per cent of Ghana's energy needs are covered by oil as opposed to other sources of energy. Petroleum is used in the form of diesel fuel, fuel oils, petrol (gasoline), kerosene, LPG and natural gas for transportation and power generation.

Present consumption of petroleum products is in the region of 950,000 tons per annum. Ghana's oil discovery also led to the need to increase local refining capacity to meet both domestic demand and exports.

At present, less than 50 per cent of domestic demand is met by the Tema Oil Refinery (TOR). To bring refining capacity to acceptable levels, there is a need to expand the capacity of TOR to improve its operations.

Ghana does not currently depend on nuclear or other non-conventional sources of energy to meet its energy consumption requirements even though there have recently been suggestions of nuclear power generation.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The Ministry of Energy has the overall responsibility for providing policy direction within the energy sector of the national economy. It has an additional responsibility for the formulation and implementation of general policies relating to the energy sector. In 2006, it formulated Ghana's energy policy, the Strategic National Energy Plan, which spans a 20-year period. The policy seeks to respond to the country's energy vision needs with 10 broad objectives.

The Strategic Energy Plan is intended to achieve, inter alia, the following objectives:

- establish an optimal blend of increasing demand, investment in generation and transmission, and energy efficiency;
- optimise the conjunctive use of commercial grid electricity and imported fossil fuel and renewable energy such as wood fuels, which constitute over 60 per cent of Ghana's energy usage; and
- broaden the sources and types of energy supply and integrating them into high-quality service for the growth of the economy.

The policy framework has also been formulated to take account of the existing socioeconomic and environmental policies, and the links between the energy sector and other sectors of the economy.

Pursuant to this broad objective, the Energy Commission has been established as the lead agency to coordinate the general policies relating to the energy sector.

The Energy Commission performs functions relating to the regulation, management, development and utilisation of energy resources. Additionally, it grants licences for the transmission, wholesale supply, distribution and sale of electricity and natural gas, refining, storage, bulk transportation, marketing and sale of petroleum products. The Energy Commission also regulates the licensing regime for the distribution of gas.

In the formulation of policies and laws to regulate a specific sector such as petroleum operations, due regard has been given to this broad regulatory and strategic framework. The specific laws that have been promulgated to regulate the oil industry include the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84 (Petroleum Exploration Law)), the National Petroleum Authority Act, 2005 (Act 691), Petroleum Income Tax Act 1987 (PNDC Law 188) and the Ghana National Petroleum Corporation Act (PNDC Law 64). In July 2011, the Petroleum Commission Act, 2011 (Act 821) also came into being.

4 Is there an official, publicly available register for licences and licensees?

As part of its regulatory function, the Petroleum Commission keeps a record of all the upstream oil companies it registers. Entities that are registered with the Petroleum Commission can write to the Petroleum Commission requesting any information pertaining to the register. The information they seek may or may not be made available to them. The decision to release or not to release such information is currently under the total discretion of the Petroleum Commission. At present, no charges or fees have been developed and fixed for such inquiries.

5 Describe the general legal system in your country.

Ghana operates a legal system that is based on the common law system. Generally, the rule of law is upheld in Ghana. The 1992 Constitution of the Republic of Ghana has put in place a stable democratic institution and has created an environment that respects the rule of law. In recent times, the government has demonstrated an increasing respect for the rule of law. This can be seen in their compliance with decisions handed down by the courts and findings of commissions of inquiry that have found some government officials at fault. However, there has been speculation about some cases involving politicians in which investigations have been fraught with undue delays to create the perception of interference by the government.

The people of Ghana also generally obey the laws of Ghana and abide by court decisions. This has been demonstrated in the recent election petition case.

Ghana has entered into a number of bilateral investment treaties with other countries, most of which contain dispute resolution provisions. The Alternative Dispute Resolution Act, 2010 (Act 798) (Arbitration Act or Arbitration Law) regulates domestic arbitral proceedings.

The Arbitration Law does not regulate foreign arbitral proceedings. However, it provides the framework for the enforcement of foreign arbitral awards. Arbitration proceedings are considered foreign when they are undertaken outside Ghana under a system of law other than the laws of Ghana. The party seeking to enforce a foreign award is required to satisfy the following conditions:

- the award was rendered by a competent authority under the laws of the country where the award was made;
- a reciprocal agreement exists between Ghana and the country in which the award was made;
- the award was made under the international convention specified in the First Schedule to the Arbitration Act or under any other international convention on arbitration ratified by Parliament;
- the party has produced the original award or a certified copy thereof and the agreement pursuant to which the award was made or a duly authenticated copy;
- there is no appeal pending against the award in any court under the law applicable to the arbitration; and
- six years have not elapsed since the judgment was delivered either at first instance or on appeal, whichever may be the case.

The anti-bribery and corruption legislation in force in Ghana involves a framework of rules and procedures for public services on the one hand and private sector businesses on the other, with sanctions applicable. A number of laws in Ghana provide for combatting bribery and corruption.

In July 2006, the government of Ghana passed the Whistle Blower Act to encourage Ghanaian citizens to volunteer information on corrupt practices to appropriate government agencies. In December 2006, the Commission on Human Rights and Administrative Justice (CHRAJ) issued guidelines on conflict of interest to public sector workers.

In 2010, the Economic and Organized Crimes Act was enacted to establish the Economic and Organized Crimes Office (EOCO). The EOCO replaced the Serious Fraud Office and has additional powers to investigate and prosecute corruption cases. Thus, the EOCO is tasked to monitor, investigate and prosecute offences involving money laundering, human trafficking, prohibited cyber activity, tax fraud, corruption and other matters.

The Criminal Offences Act 1960 (Act 29) provides for sanctions for corruption in general. Under the Criminal Offences Act, both demand and supply sides of corruption are criminal. The sentence for a conviction for corruption under the Criminal and other Offences (Procedure) Act, 1960 (Act 30) is a prison term not exceeding 25 years.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

Oil activities are regulated by a number of laws and regulations. The Energy Commission Act, 1997 (Act 541) establishes the Energy Commission, which has the mandate to grant licences for the transmission, wholesale supply, distribution and sale of electricity and natural gas, refining, storage, bulk distribution, marketing and sale of petroleum products.

The National Petroleum Authority Act, 2005 (Act 691), establishes the National Petroleum Authority (NPA), which has been mandated to regulate, oversee and monitor activities in the petroleum downstream industry and to establish a unified petroleum price fund. It has the additional responsibility of granting licences for the supply, bulk storage, transportation and retailing of petroleum products.

The Petroleum Commission Act, 2011 (Act 821), sets up the Petroleum Commission for the regulation and management of the utilisation of petroleum resources. This Act takes away the hitherto regulatory functions of the Ghana National Petroleum Corporation (the GNPC). The Petroleum Commission is responsible for registering and issuing permits to firms active in the upstream petroleum industry. The Petroleum (Local Content and Local Participation) Regulations passed in 2013 regulates local content in the upstream sector.

The Ghana National Petroleum Corporation Law, 1983 (PNDCL 64), sets up the GNPC, which is responsible for the development, production and disposal of petroleum.

The Petroleum Revenue Management Act passed in 2011 addresses how petroleum revenues are collected, spent and invested. The Public Interest and Accountability Commission, established by the Petroleum Revenue Management Act, is mandated to oversee petroleum revenue management and allocation.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

Yes. Pursuant to section 12(1) of the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84) (the Petroleum Exploration Law), if an oil company does not make commercial discovery of petroleum within seven years of being given an exploration licence, the petroleum agreement will terminate, irrespective of the duration stipulated in the agreement. The Petroleum Exploration Law provides, in the relevant part, that a petroleum agreement entered into in Ghana is valid for a total period of not more than 30 years.

Further, where there is war or any other emergency affecting energy supplies, the Minister of Energy may compel an oil company to sell all or part of the quantity of petroleum it produces to the Republic of Ghana or an agency of the Republic. However, this would be done at prevailing market prices.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The Ministry of Energy provides the overall policy direction in the management of natural resources in general and the oil sector in particular. The attorney general's department under the Ministry of Justice is also responsible for drafting the required laws for regulating the oil sector.

The Environmental Protection Agency (EPA) is responsible for the enforcement of the environmental laws of Ghana. In enforcing this requirement, the EPA ensures that the exploration and development of oil is undertaken in an environmentally friendly manner.

The GNPC is responsible for the development, production and disposal of petroleum. The GNPC may undertake this responsibility alone or in a joint venture with a contractor.

The Petroleum Commission has an obligation to ensure that the contractor satisfies its obligations with respect to minimum expenditure and work programme requirements. Nevertheless, the GNPC is relied upon by the Petroleum Commission for the performance of the technical side of these regulatory functions.

The NPA is also given a broad mandate to regulate, oversee and monitor activities in the petroleum downstream industry. In particular, it sets prices for petroleum products and supervises the bulk storage and transportation of petroleum products.

9 What government body maintains oil production, export and import statistics?

With respect to upstream operations, the law establishing the GNPC makes it mandatory for international oil companies to maintain data relating to oil exploration and production.

The data so maintained is deemed as the intellectual property of the government and the international oil company cannot deal with such data without the consent of the government.

In the downstream sector, the NPA has been mandated to regulate matters relating to export and import statistics. Petroleum marketing companies are required to submit data on import and export statistics to the NPA.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

Ownership of land in Ghana is generally vested in chiefs, families, the state and individuals. However, the system of landownership makes a conceptual distinction between surface rights and subsurface rights for the purposes of determining ownership of any minerals embedded in a given piece of land.

The right to minerals embedded in the subsurface is severed from the surface rights of persons who have an interest in land. The 1992 Constitution provides that every mineral (including petroleum) in its natural state within any land in Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of Ghana and shall be vested in the president on behalf of and in trust for the people of Ghana.

State ownership of petroleum resources is further emphasised in the Petroleum Exploration Law. Section 1 of the law stipulates that all petroleum existing in its natural state within the jurisdiction of Ghana is the property of Ghana and is vested in the president on behalf of and in trust for the people of Ghana, subject to any right granted, conferred, acquired or recognised.

Subject to the payment of appropriate compensation, the state has the right to appropriate any given piece of land for the exploration and development of petroleum resources.

In brief, the legal regime for property rights is dual in nature. In one respect it enables individuals to enjoy the surface rights relating to a piece of land; at the same time, it vests in Ghana control over the mineral resources embedded in the subsurface.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Commercial production of oil from the Jubilee Field started in December 2010 and is currently reported as between 70,000 and 130,000 bbl/day.

In addition to ongoing development work on the Jubilee field by the Jubilee partners, Eni has announced that it is planning to proceed with the Sankofa Oil and Gas field development and Hess has also had exploration successes.

The companies which are active in the petroleum exploration, development and production in Ghana include Eni, Hess, Afren, Saltpond Offshore Production, Vitol, Gasop Oil, Oranto Petroleum, Vanco Ghana Limited, Lukoil, Kosmos, Tullow and Anadarko.

Oil exploration and production has been mainly offshore at the Jubilee Field located in an area straddling the West Cape Three Points and Deepwater Tano contract blocks.

The legal regime regulating petroleum operations does not explicitly designate particular areas as off-limits for the purposes of oil exploration and production. However, petroleum operations are expected to conform to the environmental laws of the country and to international best practice for the protection of human and marine resources.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The Ministry of Energy has the overall responsibility for providing policy direction for oil exploration and production. The government's participation in the regulation of the oil industry is undertaken through the Petroleum Commission.

Under the general supervision of the Ministry of Energy, the Petroleum Commission is responsible for managing the petroleum resources of Ghana. The law establishing the Petroleum Commission, in the main, spells out its organisational structure, objects and mode of operation.

The Petroleum Exploration Law provides the legal framework for establishing the contractual relationship between the state, the GNPC and prospective oil companies.

Section 2 of the Petroleum Exploration Law provides that no person other than the GNPC shall engage in petroleum exploration, development and production without an agreement with the GNPC.

The Petroleum Exploration Law further provides that any person intending to engage in petroleum exploration and development shall submit an application to the Minister of Energy. This forms the basis of the licensing application in the industry.

In practice, the licensing procedure is coordinated by the GNPC and the Petroleum Commission, which has packaged Ghana's upstream oil potential into blocks. Interested investors apply to the Minister, who then refers the application to the GNPC and the Petroleum Commission for evaluation and due diligence.

The Petroleum Commission then issues a report that leads to negotiations, and a draft petroleum agreement is then sent for the approval of the Cabinet and Parliament. The licence is only granted after Parliament ratifies the Petroleum Agreement in accordance with article 288 of the 1992 Constitution of Ghana.

The Petroleum Exploration Law provides the framework for the management of oil and gas exploration, development and production. It deals extensively with petroleum contracts, the rights and responsibilities of contractors, and compensation payable to those affected by activities in the petroleum sector.

In addition, it provides the basic terms and conditions of every Petroleum Agreement negotiated and executed in Ghana, and spells out the rights and obligations of each party to the Agreement, as well as the sanctions that may be applied for any breach of obligations assumed under the Petroleum Agreement.

On the basis of the Petroleum Exploration Law, a standard petroleum contract, known as the Model Petroleum Agreement (the MPA), has been developed to provide the framework for negotiating the terms and conditions of a petroleum agreement among the parties to a petroleum contract.

The parties are made up of the GNPC, the government and the oil company. The Petroleum Agreement embodies the final terms and conditions to regulate the intended petroleum operations. The typical areas covered by the MPA include:

- the contract area (block) (the delineated area where petroleum operations may be carried out by the oil company (investor));
- the exploration period (the limit in terms of duration for the exploration operations);
- the work programme (the defined amount of work that the investor is expected to achieve in the contract area during the exploration period);
- the cost of work, that is, the agreed amount to be expended by the investor to carry out the work programme, during the exploration period; and
- sanctions, in the event of failure by the investor to achieve its work programme at the stipulated time.

The Petroleum Exploration Law provides an initial contractual period of 30 years, which is subject to renewal for all petroleum agreements between the state and oil companies.

Under the law, an oil company with a prospecting licence is required to make a commercial discovery within seven years, failing which it will be required to relinquish the contract area.

Apart from its licensing role, the Petroleum Commission together with the GNPC is further mandated to approve field development plans and monitor the production cost and activities of the international companies.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

Under section 17 of Ghana's Petroleum Exploration Law, the government has a statutory right to participate in an exploration or production licence. Section 17 of the Petroleum Exploration Law states clearly that, when a discovery of oil is declared to be commercial, the state, acting through the GNPC (the state oil company) shall have the option to acquire up to such percentage of the interest in the rights and obligations of such petroleum operations on such terms as may be agreed between the GNPC and the licensee in such petroleum agreement.

Even though no figure is fixed in the Law, the MPA that is prepared and used by the government has stipulated a negotiable rate of between 4 per cent and 12.5 per cent. The oil companies and the government agree on the terms of the petroleum agreement through direct negotiations before an agreement is signed and ratified by the country's legislature. There is a proposed new law, which has fixed the free carried participating interest of GNPC at 15 per cent.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

The fiscal package consists of royalties, carried interest, paying interest, additional oil entitlement, petroleum income tax and annual surface rental. There are also indirect tax obligations in the form of local content requirements, domestic supply obligations and decommissioning.

The Petroleum Law provides that the oil company (the investor) pays royalties on production, but no figure has been fixed. However, the MPA, which was prepared by and is used by the GNPC, and was approved by the government, has stipulated a negotiable rate of between 10 per cent and 12.5 per cent for crude oil and 7.5 per cent for natural gas.

The main advantage of the royalty tax system is that the resource owner (ie, the state) can have its resources exploited and receive benefits without making any financial contribution.

In view of the fact that payment of royalties affects the profits of the operation, the industry practice has been to levy lower royalty rates on the riskier, more costly and deep sea operations, and then levy a higher rate commensurate with the lower level of risk associated with the onshore and offshore shallow water operations.

Royalties are levied on gross production of oil and gas by the state irrespective of the profitability of operations. It can be taken in the form of oil or cash. The tax regime dealing with the petroleum sector also recognises the commercial entitlement of investors – the companies that undertook the huge risks and expenses of exploration, development and now production of Ghana's Jubilee Field.

The fiscal aspect of the petroleum industry in Ghana makes no distinction between onshore and offshore production for purposes of determining the tax liabilities of international oil companies.

Other than tax and royalties, the only payments that will be required are licensing and registration fees payable to the Petroleum Commission.

15 What is the customary duration of oil leases, concessions or licences?

Section 12(1) of the Petroleum Exploration Law provides, in the relevant part, that a petroleum agreement shall be valid for a total period not exceeding 30 years. The Law is flexible in terms of a review of petroleum agreements where significant changes occur in the circumstances prevailing at the time of entry into the agreement or the last review of agreement. An extension is therefore a possibility.

The Petroleum Exploration Law fixes the maximum period for petroleum exploration at seven years. This is normally divided into an initial three-year phase followed by two-year phases.

Depending on the size of the contract area, these phases can be negotiated. The contractor is required to relinquish part of its contract area after a period of seven years if it fails to make a discovery in commercial quantities.

Depending on the size of the contract area, the contractor will be required to relinquish 20 per cent of the contract area. For a smaller acreage, relinquishment may be between 10 per cent and 15 per cent. The percentage of relinquishment is a subject of negotiation.

16 For offshore production, how far seaward does the regulatory regime extend?

In accordance with international law, the regulatory regime extends up to a maximum of 200 nautical miles from the baselines, from which the breadth of the territorial waters is measured.

It is reported that the extended legal continental shelf holds significant recoverable reserves of oil and gas for Ghana.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

There is hardly any difference between the onshore and offshore regimes. They are both governed by the same laws and practices, and both regimes are expected to conform to international best practice.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

The GNPC in collaboration with oil companies usually carries out exploration and production activities subject to petroleum agreements. The GNPC has carried out a preliminary evaluation of the oil and gas potential of Ghana's sediment basins and packaged the potential areas into blocks. These blocks are applied for by potential investors. An investor completes an application form and submits it to the Minister of Energy who then refers it to the GNPC and the Petroleum Commission.

The Petroleum Commission and the GNPC then carries out due diligence on the company that has applied for the block. In evaluating the application of an investor, the Petroleum Commission and the GNPC takes cognisance of the financial capability of the investor, the technical track record of the investor, the proposed work programme, and budget and fiscal package proposed by the investor.

The work programme and the fiscal package are two of the critical areas for negotiations. Due diligence is also conducted on the investor company to ensure that it is duly incorporated as a corporate legal entity to conduct operations.

When this has been done, a comprehensive report, including the Petroleum Commission's recommendation and the GNPC recommendation, is submitted to the Minister of Energy. If the investor company qualifies in accordance with the set criteria, the Minister instructs the petroleum agreement negotiation team to negotiate with the investor.

19 What is the legal regime for joint ventures?

There is no express provision for the regulation of joint ventures in the petroleum industry. Membership and operation of joint ventures are regulated by the standard rules of contract and other petroleum laws that are relevant to such joint ventures.

At present, the joint venture partners operating the Jubilee Field in Ghana comprise Tullow Ghana Limited (34.70 per cent), Kosmos Ghana HC (23.49 per cent), Anadarko WCTP Company (23.49 per cent), Sabre Oil and Gas (2.81 per cent), the EO Group (1.75 per cent) and the GNPC (13.75 per cent). EO Group has since sold its 1.75 per cent stake to Tullow.

Matters dealing with petroleum exploration and development are governed mainly by petroleum laws such as the Petroleum (Exploration and Production) Act 1984 (PNDC Law 84) and the Ghana National Petroleum Corporation Law (PNDC Law 64).

The fiscal aspects of petroleum operations are regulated by the Petroleum Income Tax Act 1987 (PNDC Law 188). It is submitted that joint venture agreements will generally be regulated by specific contract terms as well as the various statutory provisions.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Under the Petroleum (Exploration and Production) Act 1984 (PNDCL 84), the Minister of Energy has the prerogative to determine that a petroleum field shall be developed as a single unit, where a petroleum field extends beyond the boundaries of an area covered by a petroleum agreement or other authority granted or recognised under the Act.

21 Is there any limit on a party's liability under a licence, contract or concession?

There is no limit on a party's liability. Liability for any damages can also be joint and several.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Yes, parental guarantees and other forms of economic support may be sought by the Petroleum Commission during the registration of upstream oil companies.

Even though security deposits are not explicitly required, the entire permit application to the Petroleum Commission for a licence evaluates security risks.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

The Petroleum (Local Content and Local Participation) Regulations, 2013 (LI 2204) provides that oil companies operating in Ghana must, as far as practicable, use goods and services produced by or provided in Ghana for their operations.

Companies must retain the services of only indigenous Ghanaian companies in respect of insurance and reinsurance brokers, legal services, financial services and banking services, unless exempted from doing so in accordance with the Regulations. The Regulations define an 'indigenous Ghanaian company' as 'a company incorporated under the Companies Act, 1963 (Act 179) that has at least 51 per cent of its equity owned by a citizen of Ghana and that has Ghanaian citizens holding at least 80 per cent of executive and senior management positions and 100 per cent of non-managerial and other positions'.

Companies that fail to insure the insurable risks relating to petroleum activities in the country through an indigenous brokerage firm or reinsurance broker or obtain the written approval of the National Insurance Commission when seeking to obtain an insurance offshore service relating to a petroleum activity, retain only the services of a Ghanaian legal practitioner or a firm of Ghanaian legal practitioners or operate a bank account in Ghana with an indigenous Ghanaian Bank are liable:

- to pay to the Commission an administrative penalty of two hundred thousand penalty units;
- in the case of a contractor, where the contravention continues after the time specified for remedying the contravention, the Commission shall withhold the approvals and permits required by the contractor for the conduct of petroleum activities until the time that the contravention is remedied; and
- in the case of a subcontractor, licensee or other allied entity, where the contravention continues after the one time specified for remedying the contravention, the Commission shall expunge the name of the subcontractor, licensee or other allied entity from the Register of persons registered to undertake petroleum activities.

The purposes of the regulations are, inter alia, to achieve and maintain a degree of control for Ghanaians over development initiatives for local stakeholders. The Regulations will, therefore, be strictly applied to foreign investors and all other entities in the upstream petroleum industry.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

The Petroleum (Local Content and Participation) Regulations provides that a non-Ghanaian company intending to provide goods and services in the petroleum industry shall incorporate a joint venture with an indigenous Ghanaian company. The indigenous Ghanaian company should have at least 10 per cent equity participation in the joint venture.

The Local Content Law further provides that there shall be a 5 per cent equity participation of an indigenous Ghanaian company in a foreign company that qualifies to enter into a petroleum agreement with the Government of Ghana.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Yes, the Petroleum Exploration Law regulates the acquisition of the interests of a contractor in a petroleum contract entered into with the government. It specifically prohibits a contractor from assigning its rights and obligations in a subcontract, in whole or in part, to a third party without the written consent of the Minister of Energy.

The law further prohibits the contractor from transferring any share or shares in its incorporated company to an investor, either directly or indirectly, without the written consent of the Minister of Energy, if the effect of such a transfer is to give the said third party control of such a company or to enable the third party to take over the interests of a shareholder who owns 5 per cent or more of the shares in such company.

Approval for such a transfer must be sought by making a formal application from the Sector Minister, who may or may not approve such a transfer.

26 Is government consent required for a change of operator?

Section 8 of the Petroleum Exploration Law states clearly that a petroleum agreement shall not directly or indirectly be assigned, in whole or in part, by the holder of the agreement to another person without the prior written consent of the Sector Minister.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

At present, the law does not explicitly prescribe any peculiar fees or taxes by the government on a transfer of change of control of petroleum rights. However, the usual transaction fees such as processing and registration of change of ownership accompanying such transactions would have to be made.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The Petroleum Exploration Law contains provisions that govern decommissioning. The Petroleum Exploration Law provides in relevant parts that a corporation or contractor shall, in accordance with regulations and best international techniques and practice, submit to the relevant authorities a development plan including a decommissioning plan in respect of any petroleum field to be developed directly by the corporation or by the contractor.

The Law also imposes an obligation on corporations or contractors to restore areas affected by their petroleum operations after they terminate those operations. They are also expected to remove any causes of damage or danger to the environment in accordance with regulations, and also carry out decommissioning in accordance with the approved development and decommissioning plan.

Corporations or contractors are expected to establish a decommissioning fund not later than 90 days after the approval of their development plan by the Sector Minister. The fund shall contain sufficient funds to cover decommissioning. The fund shall not be disbursed for any purpose that is not in connection with decommissioning.

The law does not distinguish between decommissioning and abandonment.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

According to the law, corporations or contractors are expected to establish a decommissioning fund not later than 90 days after the approval of their development plan by the Sector Minister. The fund shall contain sufficient funds to cover decommissioning. The fund shall not be disbursed for any purpose that is not in connection with decommissioning.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Regulation of downstream operations is a shared responsibility between the Energy Commission, the NPA and the Bulk Oil and Transportation Company (BOST). The Energy Commission and the NPA have been established to play parallel roles in the allocation of licences for the transportation of crude oil and crude oil products.

Consequently, an individual or corporate entity that wishes to engage in a business or commercial activity in the downstream industry is required to obtain the required licences from both bodies.

The NPA also grants licences for the design, procurement, construction and operation of all facilities and infrastructure including refineries, process plants and petrochemical plants. A licence is also required from the NPA for the establishment, construction and maintenance of process plants and petroleum transportation.

BOST is a company charged with maintaining Ghana's strategic stock of petroleum products.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

The Energy Commission Act 1997 (Act 541) provides that a person shall not, unless authorised to do so by a licence granted under the Act, engage in a business or commercial activity for refining, storage, bulk transportation, marketing or sale of petroleum products.

A licence under the Energy Commission Act may only be granted to a citizen, a body corporate registered under the Companies Act, 1963 (Act 179) or under the laws of Ghana, or a partnership registered under the incorporated Private Partnership Act 1962 (Act 152).

Similarly, section 12 of the National Petroleum Authority Act 2005 (Act 691), sets out the conditions precedent for the grant of a licence for the transportation of crude oil products.

One of the main requirements for securing a licence, particularly from the NPA, is that the person must be a citizen or a body corporate registered under the Companies Act or Incorporated Private Partnership Act of Ghana.

However, a foreign individual or a foreign company in a registered joint venture relationship with a citizen or a Ghanaian company can also be granted a licence.

The licences are granted upon the payment of the appropriate fees to either institution.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

The EPA, the GNPC, the Ghana Maritime Authority, the Security Services and other allied state institutions play strategic and interconnected roles for the sustainable exploitation of Ghana's emerging oil and gas industry.

The overriding object of this inter-connectivity is to ensure that the petroleum resources are managed in a sustainable and environmentally friendly manner.

The principal government institution responsible for ensuring compliance with the environmental laws of Ghana is the EPA. As a condition precedent to the commencement of petroleum exploration and production, international oil companies are required to submit an environmental impact assessment to the EPA.

In its report, the international oil company is required to provide sufficient details about the proposed operations, its potential environmental impact and the proposed safeguards for mitigating its impact on the environment.

In addition, international oil companies carrying out petroleum operations are also obliged to ensure that they maintain at the worksite an establishment capable of dealing with fire, oil spills, blowouts, accidents or any other emergency situations so as to prevent or control those situations and to minimise loss or damage from them.

In addition, a contractor or subcontractor carrying out petroleum operations is responsible for pollution or damage caused by or resulting from the operations as well as pollution or damage caused by or resulting from petroleum operations undertaken by an agent or employee of the contractor or subcontractor, and shall take the necessary measures to remedy the pollution or damage caused.

An international oil company is also required to carry out petroleum operations in a safe manner in accordance with the best international practices prevailing in the petroleum industry in comparable circumstances.

In the event of default in respect of its environmental obligations, the GNPC will take steps to remedy the situation, and the company in default will be liable to reimburse the corporation of all costs and expenses incurred in that regard.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The legal regime for the regulation of the oil industry has mandated some statutory bodies to enforce the health, safety and environmental aspects of oil production and consumption.

The EPA is authorised to enforce the relevant laws relating to the environment. As a precondition to the commencement of oil exploration and production, the international oil company is required to submit an environmental impact assessment to the EPA.

The NPA has overall responsibility for the standardisation and the quality assurance of oil and oil products for both local consumption and export. However, the establishment of specifications of fuel products is undertaken by the NPA in conjunction with the Ghana Standards Board.

The two statutory bodies also act jointly in specifying the allowable content of additives in each type of fuel and fuel-related product. The board of the NPA is required to monitor the refinery and manufacturing processes of petroleum products to ensure the application of clean and safe technology.

The National Petroleum Authority Act also requires petroleum service providers to submit monthly reports on a date specified by the board indicating details of actual imports, production, domestic sales and consumption, inventory of crude oil products and exports.

Unlike the Environmental Petroleum Agency, the law establishing the NPA has not attached any specific penalties to the non-compliance with the statutory requirements by oil marketing companies.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The labour market of Ghana is governed by the 1992 Constitution, the Labour Act 2003 (Act 651) and the Workmen's Compensation Law 1987 (PNDCL 187). The various statutes regulating the oil industry also contain provisions dealing with labour issues.

In addition to the above-mentioned regulations, the engagement of foreign labour is regulated by the Immigration Act 2000 (Act 573). Expatriate employees are also required to pay income and withholding taxes.

International oil companies are prohibited from engaging in any discriminatory practice on grounds of race, nationality or sex in the conditions of service provided for personnel. There is a further legal obligation on international oil companies to ensure that Ghanaians working in the sector are equipped with the required skills and expertise in the various areas of petroleum exploration and production.

In 2013, the government of Ghana passed the Petroleum (Local Content and Local Participation) Regulations, 2013 (LI 2204), with the aim of achieving full local participation in all aspects of the oil and gas value chain. The Regulations impose an obligation on international oil companies to ensure that Ghanaians, who have the requisite expertise or qualifications in the various levels of the operations, are given first consideration with respect to employment. In addition, only Ghanaians are to assume the middle and junior level positions.

At present, there is no training fund for the local workforce. However, where Ghanaians are not employed because of their lack of expertise, the international oil company must ensure that every reasonable effort is made to provide such training to the Ghanaians in that field, either locally or elsewhere. In addition, where a non-Ghanaian is employed in a position, the international oil companies must submit a succession plan to the Petroleum Commission.

In pursuance of this objective, international oil companies have an obligation to implement plans and programmes for training Ghanaian citizens in the various job classifications and within any other aspect of petroleum operations.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The Ghana Revenue Authority is the principal government body that wields tax authority. It administers the various tax laws in Ghana and works to ensure compliance by relevant entities, oil companies included.

An international oil company is required to pay taxes in accordance with the relevant laws. The tax regime for petroleum operations is governed by the Petroleum Income Tax Act (PNDC Law 188) and the Internal Revenue Act, 2000 (Act 592). It provides that income tax shall be assessed on gross income after deductions of outgoings and expenses wholly incurred in the petroleum operations, including the payment of royalties and rentals.

It is an option that is incorporated into a petroleum agreement to enhance the state's benefits, which are exercisable by the state within 60 days after the declaration of a commercial find.

The state is also entitled to additional oil entitlement (super normal profit tax), which is levied in the case of windfall profit. International oil companies are also liable to pay for surface rentals per square kilometre.

Taxes payable in respect of the transportation, marketing and distribution of petroleum products are not provided for under the regime for regulating petroleum operations. However, the Internal Revenue Act would be used to fill any gaps not covered by the Petroleum Income Tax Act.

In terms of corporate income and withholding taxes, oil companies are treated in the same way as all other companies are treated as prescribed in the tax laws, particularly the Internal Revenue Act, 2000 (Act 592).

At present, the corporate income tax paid by companies in downstream petroleum business is 25 per cent on profits made in a year.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

The NPA has oversight responsibility over the pricing of crude oil and refined products. It sets the prices for petroleum products in accordance with prevailing international market rates.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The present legal regime has not made any express provisions for the regulation of anti-competitive behaviour in the upstream sector of the petroleum industry. However, the NPA is authorised under the National Petroleum Authority Act, 2005 (Act 691) to prevent and punish anti-competitive behaviour in the downstream sector of the industry.

The NPA enforces applicable conditions for stimulating competition, while concurrently discouraging monopolistic behaviour in the domestic retail market.

Further to its objective, the board of the NPA takes the necessary measures in compliance with the Protection Against Unfair Competition Act 2000 (Act 589) to prevent the formation of cartels, monopolies and unfair competition in the petroleum downstream industry.

It also ensures the strict observance of fair and equitable practices and enforces existing contracts by monitoring the conduct of relationships among petroleum service providers.

The board of the NPA is also given the power to formulate and establish a programme to promote new entrants as petroleum service providers in the petroleum downstream industry.

The NPA is also empowered to provide incentives for free zone developers and enterprises.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

The present set of regulations and laws do not make any express provisions for appealing regulatory decisions of the government. However, the combined effect of articles 23 and 297 of the 1992 Constitution imposes an obligation on administrative agencies to act fairly in discharging their functions.

It is submitted that persons who are aggrieved by the decision of any administrative bodies are entitled to appeal such decision in the normal courts of Ghana.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

International treaties and multilateral agreements do not automatically apply until they are ratified by the Ghanaian parliament. Ghana is signatory to several conventions on climate change, bio-diversity, land degradation and other environmental issues, including the Kyoto Protocol.

Ghana is also signatory to the United Nations Framework Convention for Climate Change. Within the West African sub-region, the Economic Community of West African States, of which Ghana is a key member, is promoting regional energy cooperation and integration.

The exploration and production of petroleum is required to be conducted in conformity with these international obligations.

Update and trends

On 19 September, 2014, the government of Ghana gazetted and introduced the new Petroleum (Exploration and Production) Bill to parliament. According to the government of Ghana, the new Petroleum Law is to improve the existing legal framework.

The new Petroleum Law has provisions that deal with safety requirements, standards, emergency preparedness and safety zones.

Under the new Petroleum Law, contractors are required to comply with the provisions of the Environmental Protection Agency Act, 1994 (Act 490). The issue of decommissioning has been extensively provided for in the new Petroleum Law and participants in the petroleum industry will be strictly held liable for any pollution or damage resulting from their operations.

The new Petroleum Law also deals with the fiscal regime by introducing the collection of new fiscal elements such as bonus payment and providing for matters such as rate of royalty and annual acreage fees to be fixed in a subsidiary legislation and not left to be negotiated in a petroleum agreement.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Any foreign company intending to carry out petroleum operations in Ghana is required to incorporate an entity under the Companies Act, 1963 (Act 179).

The company is further required to maintain an office or establishment in Ghana to carry out petroleum operations, and shall have in charge of the office a representative with full authority to act and to enter into binding commitments on behalf of the contractor.

The Petroleum Exploration Law regulates the acquisition of the interests of a contractor in a petroleum contract entered into with the government. It specifically prohibits a contractor from assigning its rights and obligations in a subcontract, in whole or in part, to a third party without the written consent of the Minister of Energy.

The law further prohibits the contractor from transferring any share or shares in its incorporated company to an investor, either directly or indirectly, without the written consent of the Minister of Energy, if the effect of such a transfer is to give the third party control of the company or to enable the third party to take over the interests of a shareholder who owns 5 per cent or more of the shares in such a company.

Where the merger or acquisition results in the creation of a new company, the petroleum agreement cannot be assigned to the new company without the consent of the Minister of Energy.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Crude oil sales are regulated by the NPA. Under the National Petroleum Authority Act, petroleum marketing companies are required to submit monthly reports to the NPA.

The service company is required to provide details of imports, production, domestic sales and consumption, and an inventory of crude oil and products and exports

The rules for regulating crude oil and crude oil product sales within Ghana are the same in respect of cross-border sales or deliveries of crude oil products.

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Greenland

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Greenland is the world's largest island. Its land area is 2.2 million km^2, but 1.8 million km^2 are covered by the Greenland ice sheet. The northern-most extremity of Greenland is Cape Morris Jessup, which is also the northern-most land area in the world, situated less than 730km from the North Pole. Greenland has a population of 56,000.

Greenland is an autonomous part of the Kingdom of Denmark (the Community of the Realm), which comprises Denmark proper, Greenland and the Faroe Islands (an island group situated about half way between Scotland and Iceland).

Greenland had home rule from 1979 to 21 June 2009 when it obtained self-government after a referendum and negotiations with the Danish government. The Danish Act No. 473 of 19 May 2009 on Greenland Self-Government entered into force on 21 June 2009. Greenland has extensive self-government under the act, which for most areas of government either transferred or provides for the transfer of the legislative power from the Danish Parliament to the Greenland Parliament and the executive power from the Danish government to the Greenland government.

As part of the self-government, Greenland owns and has the right of disposal of all mineral resources, including oil and gas, in its land, territorial sea and continental shelf areas. Under the Greenland Self-Government Act, it may be decided that all legislative and executive powers in the mineral resources area including oil and natural gas shall be transferred from the Danish state to Greenland's self-government authorities. The transfer was decided by the Greenland Parliament on 23 October 2009 and became effective on 1 January 2010. In connection with the transfer of powers, the former Danish Act on Mineral Resources in Greenland, which regulated prospecting, exploration and exploitation of oil, gas and minerals, was repealed and replaced by the present Greenland Parliament Act No. 7 of 7 December 2009 on Mineral Resources and Activities of Importance Thereto (the Mineral Resources Act). The main provisions on oil and gas licences in the present Greenland mineral resources act are based on and correspond to the provisions on such licences in the former Danish Mineral Resources Act. All prospecting, exploration and exploitation licences granted under the former Danish Act are still effective but are now governed by the present Greenland Act. Exploration for oil and gas began in the early 1970s in areas offshore West Greenland. Comprehensive seismic surveys were carried out, and almost 21,000 line kilometres of reflection seismic data were acquired. In 1976 and 1977, five exploratory wells were drilled. Exploration was discontinued in late 1978. All wells were declared dry by the operators.

But in 1997, the Geological Survey of Denmark and Greenland (GEUS) began to carry out reinvestigations of the well data and found that they suggested a hydrocarbon discovery in the Kângamiut-1 well.

A licensing round for areas offshore West Greenland was held in 1992 to 1993. As no applications were submitted, an open door licensing policy was introduced in 1994. It covered both onshore and offshore areas south of 70 30°N in West Greenland and Jameson Land in East Greenland.

Subsequent investigations were carried out by Nunaoil A/S – a company then owned jointly by Greenland's home rule authorities and the Danish state, and now owned by Greenland's self-government authorities. The investigations confirmed the existence of cross-cutting reflectors. Based on these discoveries, a licence was awarded in 1996 to a consortium consisting of Statoil, Phillips Petroleum, DONG and Nunaoil. In 1998, a new licence was awarded to the same participants.

Licensing rounds were held in 2001, 2002, 2004, 2006 and 2007. In April 2008, an open door licensing procedure was launched. It covered offshore areas in west Greenland and around Cape Farewell, the southern-most extent of Greenland. On 1 January 2010, it was succeeded by an open door licensing procedure under the present Greenland Mineral Resources Act. The 2010 open door licensing procedure covers offshore areas in the southern part of west Greenland and around Cape Farewell and onshore areas in Jameson Land in east Greenland.

In October 2009, the Greenland government issued an invitation to apply for licences for exploration and exploitation of hydrocarbons (oil and natural gas) in two licensing rounds: the Baffin Bay Licensing Round 2010 covers offshore areas of 151,358km^2 in west Greenland. The areas are three times the area of Denmark proper. The areas have been divided into 14 blocks of sizes between 8,000km^2 and 15,000km^2. By the application deadline on 1 May 2010, Mineral and Licence Safety Authority (formerly the Bureau of Minerals and Petroleum) had received 17 applications from 12 international oil companies, including some of the world's major oil companies.

The Greenland Sea Licensing Round 2012–13 covered offshore areas of 50,000km^2 in East Greenland. Companies that are members of the Kanumas Group could submit applications for licences in a special pre-round, which ended on 15 December 2012. The pre-round covered areas of 30,000km^2 designated by the Greenland government in the ordinary round area of 50,000km^2. Subsequently, any company could submit applications for licences in the remaining parts of the ordinary round areas in a subsequent ordinary licence round.

In December 2013, the government announced that it had decided to grant exclusive exploration and exploitation licences to three consortiums in four blocks in the Greenland Sea, based on the applications in the 2012–2013 Licensing Round.

In 2014, licensing rounds were held regarding Jameson Land and south-west Greenland. No licensing rounds will be held in 2015.

The government published its oil and mineral strategy for 2014–2018 in 2014. The strategy states that licensing rounds in 2016 will be held regarding Disko Bay and Nuussuaq.

So far, the exploration activities have not led any licensees to initiate any exploitation (production) activities. Many parts of the Greenland continental shelf area are still relatively unexplored. However, exploration for oil and gas has increased considerably in recent years, and a large number of licences for exploration and exploitation of oil and gas have been granted.

On 1 April 2015, an offshore area of approximately 180,000 km^2, approximately four times the size of Denmark, apart from Greenland, was covered by hydrocarbon exploration and exploitation licences. On the same date, 23 hydrocarbon exploration and exploitation licences and 20 hydrocarbon prospecting licences were in force.

Operators for the exploration and exploitation licences are: Husky Oil Operations (two licences); Capricon Greenland Exploration (11 licences); PA Resources (one licence); ConocoPhillips (one licence); Shell (two licences); Maersk Oil (one licence); ENI Denmark (two licences); Statoil (one licence); and Chevron (two licences).

Other participants in these licences are DONG (one licence); BP Exploration Operating Company Ltd (one licence); ConocoPhilips (one licence); Greenland Petroleum Exploration (two licences); Tullow Greenland Exploration Limited (one licence); Shell (two licences); and Nunaoil (all licenses).

Operators for the prospecting licences are: TGS-NOPEC Geophysical Company (three licences); Statoil Greenland (one licence); GX Technology (three licences); Capricorn Greenland Exploration (two licences); Esso Exploration (one licence); Spectrum Geo (one licence); Chevron (one licence); ConocoPhilips (two licences); Cambridge Arctic Shelf Programme (one licence); EMGS ASA (one licence); Greenland Gas and Oil Plc (one licence); Norwegian University of Science and Technology (one licence); and Shell (two licences).

Other participants in these licences are: GDF Suez; Statoil; ConocoPhillips; DONG; Maersk Oil; Capricorn; Tullow Greenland Exploration; and Nunaoil.

Statoil, GDF Suez and DONG Energy have reportedly handed back some licences, see further 'Update and trends'.

International oil companies from Europe, the United States and Canada have thus been granted offshore oil and gas licences in Greenland. These companies are interested in oil and gas exploration and exploitation in Greenland for a number of reasons, one of them probably being the assessments of the petroleum potential in both west and east Greenland made by the US Geological Survey (the USGS). For example, one assessment was issued in 2007 (Fact Sheet 2007–3077, August 2007) when the USGS completed an assessment of the potential for undiscovered, technically recoverable oil and gas resources in the east Greenland Rift Basins Province. The USGS estimated the mean undiscovered, conventional petroleum resources in that province to be approximately 31,400 million barrels of oil equivalent (Mboe) of oil, gas and natural gas liquids. However, due to the environmental conditions on Greenland it is at this moment too expensive and troublesome to exploit the oil.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

In 2013, Greenland consumed 8,979 terajoules (TJ) of energy. Approximately 15.8 per cent of the consumed energy was domestically produced sustainable energy, mainly from hydropower and waste incineration plants. A fourth hydropower plant located in Sisimiut begun operations in 2010.

From 2012 to 2013, the consumption of petroleum-based fuels, such as petrol (gasoline), diesel and other fuel oils, decreased by approximately 3.1 per cent from 7,796TJ to 7,584TJ – equivalent to a decrease from 220 million litres to 214 million litres. This means that approximately 75 per cent of Greenland's energy requirements were covered by petroleum-based fuels.

All petroleum-based fuels used in Greenland are at present supplied by foreign sources.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The Greenland government and the Mineral Licence and Safety Authority (MLSA) apply some general policy principles for activities concerning hydrocarbon (oil and gas) and mineral resources. The main objectives of the policy are to establish and maintain an attractive environment for prospecting, exploration and exploitation activities concerning hydrocarbon and other mineral resources in Greenland. Interests of oil and mineral companies are catered for in various ways and respects.

The government has decided to restructure the governmental authorities responsible for the administration of the mineral resources. Subsequently, there are now three governmental authorities responsible for mineral administration; The Ministry of Mineral Resources (with the underlying MLSA) is responsible for the licence administration. The Ministry of Industry, Labour and Trade is responsible for issues relating to social impact assessments and impact benefit agreements. The Environment Agency for Mineral Resources is still the appropriate authority for all mineral resources environmental issues. Despite the new structure applicants must still submit their licence applications to the MLSA.

A proper, effective and stable hydrocarbon regulation – to some extent similar to the Danish regulation – is established by the Greenland Mineral Resources Act and the model terms for hydrocarbon licences.

The general policy principles governing prospecting, exploration and exploitation of mineral resources, including oil, are stated in the Mineral Resources Act. The purpose of the Act is to ensure appropriate exploitation of mineral resources and use of the subsoil for storage or purposes relating to mineral resource activities. The Act shall also ensure an appropriate regulation of matters of importance to mineral resource activities and subsoil activities. The Act further aims to ensure that activities under the act are performed properly as regards safety, health, the environment, resource exploitation and social sustainability, as well as appropriately and in accordance with acknowledged best international practices under similar conditions.

The government and a single government authority, the MLSA, are responsible for all main legal and administrative matters concerning prospecting, exploration and exploitation of mineral resources, including hydrocarbon (oil and gas). This 'one-stop shop' administration is user-friendly for oil companies and supports an administration based on overall and integrated assessments, decisions and actions.

The government and the MLSA have not published an official hydrocarbon or energy policy. However, the government and the MLSA published their oil, gas and mineral strategy for 2014–2018. The strategy is available on the MLSA's website.

4 Is there an official, publicly available register for licences and licensees?

There is not an official licence register in Greenland. However, MLSA publishes a list of licences and licensees twice each month, except for July and August. The list of mineral and petroleum licences in Greenland is prepared by the MLSA on the first and sixteenth of every month. It contains information about both prospecting and exploration licences for hydrocarbons in force, including the licensees to each licence. Additionally, section I of the list gives an overview of applications for mineral and petroleum exploration and prospecting licences that are presently being processed by the authorities. The list is publicly available without cost at the website of the MLSA.

5 Describe the general legal system in your country.

The legal system in Greenland is a civil law system based on legislation created and adopted by the Parliament and is also influenced by court practice. Under Greenland law private property of land and resources is generally not recognised due to historical reasons. Contractual and property rights are protected by the Constitution and the Law of Expropriation.

Domestic judgments can be enforced through the Greenland Enforcement Court. The Brussels I Regulation does not apply to Greenland, and the Greenland Act on Civil Law does not regulate the recognition or the enforceability of foreign judgments.

Foreign arbitral awards are recognised in Greenland if recognition of the award is not evidently incompatible with the Greenland legal system. Arbitral awards in commercial disputes are recognised in Greenland if the ruling of the award has been given in a country that has adopted the New York Convention of 10 June 1958. If an arbitral award is recognised in Greenland it can be enforced through the Greenland Enforcement Court.

The UN anti-corruption convention does not apply to Greenland. However, the Greenland Criminal Law criminalises bribery, fraud and embezzlement. In addition, the Danish Administrative Law applies in Greenland. Consequently, the principles of good administrative behaviour must be complied with by any Greenland officials acting on behalf of the central administration. Subsequently, Greenland officials must not, whether it is directly or indirectly, accept gifts or other benefits which constitute or may be perceived to constitute an attempt to influence the case administration.

The government has recently published a zero-tolerance policy on corruption. The Ministry of Mineral Resources wants to forestall potential corruption risks by implementing a proactive anti-corruption policy. The anti-corruption policy provides guidance to employees of the Ministry of Mineral Resources and its subordinate institutions on how to respond when encountering corruption.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

Oil activities are governed by the Mineral Resources Act, by the licences and by the JOAs between the oil operating parties. The Greenland Regulatory Regime for Oil Activities, including, in particular, the Mineral Resources Act, covers the Greenland land areas, territorial sea and continental shelf areas.

Oil exploration and exploitation activities may be conducted both onshore and offshore. At present, there are only oil exploration activities offshore. Some minor areas in Greenland are off-limits for oil activities due to environmental or military considerations.

The main statutory rules regarding prospecting, exploration and exploitation of oil are laid down in the Mineral Resources Act. Its Part 4 contains general rules on prospecting, and Part 5 contains general rules on exploration and exploitation (production). Part 6 of the Act contains special rules on exploration and exploitation of hydrocarbons.

In 2012, the Parliament of Greenland passed an act on building and construction works relating to large scale projects (the Large Scale Act). The act applies, inter alia, to projects concerning licences granted pursuant to the Mineral Resources Act with a cost of construction above 5 billion kroner. The act stipulates a requirement for an environmental impact assessment and lays down minimum requirements with respect to foreign labour in large-scale projects.

Companies that are co-licensees – members of a licence group – must make and use a joint operating agreement, which is subject to the approval of the MLSA. The Greenland government has issued a model joint operation agreement, which generally must be used with only minor amendments.

The standard terms for prospecting licences, the model exploration and exploitation licences and the model joint operating agreement are all available at the website of the MLSA.

Prospecting, exploration and exploitation of hydrocarbons in Greenland may only be carried out under licences granted by the Greenland government. Any Greenland or foreign person or company may perform oil prospecting or exploration activities under a prospecting licence or an exploration licence, respectively, if the requirements for licensees and operators under such licences are met.

According to the Mineral Resources Act, an exploitation licence may only be granted to a public limited company that only carries out activities under licences granted pursuant to the Act. The company must, as a main rule, be domiciled in Greenland. The company must have the necessary (adequate) technical capability and experience and financial capability.

Prospecting, exploration and exploitation licences are generally granted as hydrocarbon licences that cover both oil and natural gas. Prospecting licences are non-exclusive. Exploration and exploitation licences are exclusive.

The general selection criteria for granting exploration and exploitation licences are the company's technical capability and experience, financial capability and intended exploration and exploitation activities, including its environmental protection practices and procedures.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

There are no specific legislative provisions in the Mineral Resources Act that allow expropriation of a licensee's interest. However, according to the Mineral Resources Act and the model licence the MLSA may under certain circumstances revoke a licence. A licence may, for instance, be revoked in case of non-compliance with provisions in the Act or provisions in the licence, or in case of bankruptcy.

Further, it follows from the Mineral Resources Act that the Greenland government can expropriate in order to establish operations governed by the Mineral Resources Act. The terms and conditions of expropriation are set forth in the Greenland Act on Expropriation.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The government is generally responsible for all legal and administrative matters concerning prospecting, exploration and exploitation (production) of oil, storage of exploited oil and establishment and operation of oil pipelines for transportation of oil in connection with the said other activities governed by the Mineral Resources Act. All these activities are governed by the Mineral Resources Act.

Prospecting, exploration and exploitation licences may only be granted, amended and revoked by the government, which also must approve any direct or indirect transfer of a licence or a share of (participating interest in) a licence.

Administration of the Mineral Resources Act and all activities under it is generally carried out by the MLSA under the government.

Nunaoil A/S, a Greenland public limited company owned by the government, is a mandatory participant in any hydrocarbon exploration and exploitation licence (see question 13).

The MLSA approves activities under prospecting, exploration and exploitation licences (to the extent approval is required), licensees' provision of security for performance of their obligations and plans for exploitation and decommissioning. In cooperation with the Greenland Minister of Industry and Mineral Resources, the MLSA also approves appointments of operators. Further, the MLSA supervises and inspects activities under licences and other activities covered by the Mineral Resources Act.

The Greenland government is generally responsible for all legal and administrative matters concerning prospecting, exploration and exploitation of gas, subsoil storage of gas and establishment and operation of gas pipelines for transportation of gas in connection with the said other activities governed by the Mineral Resources Act. All these activities are governed by the Mineral Resources Act.

The Mineral Resources Act was changed on 1 January 2013 with immediate effect. The administration of environmental protection in hydrocarbon projects was separated from the Bureau of Minerals and Petroleum (now the MLSA), and placed with the Ministry of Domestic Affairs, Nature and Environment

The MLSA is a one-stop shop, however, and obtains the necessary approvals of, for instance, environmental impact assessment reports from the ministry.

Administrative and regulatory decisions of the Mineral Licence and Safety Authority may be appealed to the Greenland Minister of Industry and Mineral Resources.

Administrative and regulatory decisions of the Minister of Industry and Mineral Resources cannot be appealed to any other public authority.

Decisions of the MLSA and the Minister may be brought before the Greenland courts, which may revoke or amend such decisions.

9 What government body maintains oil production, export and import statistics?

The MLSA is responsible for compiling and keeping information provided by licensees in connection with prospecting, exploration, exploitation (production) and subsequent export of mineral resources, including oil.

In connection with this, the MLSA will also make and keep statistics regarding oil production and export.

Greenland Statistics maintains statistics on oil import and energy consumption. Greenland Statistics is an independent institution under the Greenland Minister for Finance.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

As part of its self-government, established by the Danish Act No. 473 of 12 June 2009 on Greenland Self-Government, Greenland owns and has the right of disposal of all mineral resources, including oil and gas, within its land, territorial sea and continental shelf areas.

Under the Mineral Resources Act, prospecting, exploration and exploitation (production) of all mineral resources, including oil and gas, in Greenland may only be carried out under licences granted by the Greenland government.

An exploitation licence only allows the licensee to exploit and sell or use the covered mineral resources, for example oil and gas. The licence does not grant any kind of ownership or other similar legal title over the covered mineral resources (until exploited) or the covered licence area.

There is no legal distinction between surface mineral rights and subsurface mineral rights under the Mineral Resources Act.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Oil activities, including prospecting, exploration and exploitation (production) may be conducted both onshore and offshore. At present, there are only oil activities offshore.

Onshore oil activities will naturally be more difficult in those major parts of Greenland that are covered by the Greenland ice sheet. The ice sheet covers 1.8 million km^2 of the total land area of 2.2 million km^2.

Some minor areas in Greenland are off-limits for oil activities due to environmental or military purposes.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

As mentioned in question 10, prospecting, exploration and exploitation of oil may only be carried out under licences granted by the government.

The responsible government authorities and the general regulation of licences are described in questions 7 and 8 and in questions 14 to 20.

Applications are submitted to the government of Greenland through the MLSA. The MLSA has issued a number of forms to be filled out by the applicant. The Greenland government has recently published its oil and mineral strategy for 2014–2018. According to the strategy, a new licensing round will be held regarding the areas of Baffin Bay, the David Strait, the Jameson Land, the Nuussuaq peninsula and the areas of Southern Greenland and Southwestern Greenland. There will also be new open door licensing.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

Nunaoil A/S – a Greenland public limited company owned by the Greenland government – is a mandatory participant in any hydrocarbon exploration and exploitation licence. Nunaoil's share of a licence is set out in the licence and varies between 8 per cent and 12.5 per cent. The participating interest of Nunaoil in an exploration licence is 'carried'. This means that Nunaoil's share of costs, expenses, obligations and liabilities under the licence is borne solely by the other participants in the licence. If an exploration licence is extended as an exploitation licence, Nunaoil's participating interest is no longer 'carried'. Nunaoil A/S participates in the licence on equal footing with the other parties. Nunaoil does not have any special right to participate in the operatorship of a licence, while on the other hand not being precluded from it either.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Pursuant to the Mineral Resources Act, licences for exploitation (production) of oil and gas may contain provisions on payment of a 'surplus royalty'. This is a payment to the Greenland government of an amount equal to a specific share of the licensee's profit from the activities under the licence.

Under the Mineral Resources Act and the terms of exploitation licences, licensees must pay certain fees and a surplus royalty to the Greenland government. Comprehensive provisions on calculation and payment of the surplus royalty are set out in the licences and their appendices containing accounting principles.

First of all, the licensee is obliged to pay a fee of 100,000 kroner to the MLSA for the issuance of an exploration licence. For each exploitation licence, the licensee shall further pay an annual rental of 1 million Danish kroner to the MLSA. The rental shall be paid no later than 1 April each year. The fees and rentals are adjusted yearly according to the Danish consumer price index.

There is generally no difference between onshore and offshore exploitation of oil and gas as regards fees, surplus royalties and the mandatory participation of Nunaoil with carried interest during the exploration period.

No tax stabilisation measures apply to licensees under the Greenland Mineral Resources Act, and licensees are generally not protected against future increases in the Greenland corporate tax rate.

According to the oil and mineral strategy of 2014–2018, the government is considering revising the 'government take' model. The revision includes the imposition of a profit royalty that is to be paid by the licensees. The actual amount of the profit royalty is unknown at the moment, but will probably be in the area of 2.5 per cent to 5 per cent. The terms of the model licence for exploration and exploitation of hydrocarbons was recently amended with respect to, inter alia, the 'government take' model, reporting on direct and indirect taxes and Nunaoil's participation share of the licences. The changes will apply to the 2016 licensing round regarding the onshore areas on Disko Island and in Nuussuaq Peninsula, West Greenland.

15 What is the customary duration of oil leases, concessions or licences?

Prospecting licences are granted for periods of up to five years at a time. Licence periods for exploration licences are generally 10 years, but may be up to 16 years if justified by special circumstances. An exploration licence period may be extended by periods of up to three years at a time with a purpose of further exploration.

An exploration licence will be extended as an exploitation (production) licence with a purpose of exploitation if the licensee has complied with the terms of the exploration licence, including the requirement to demonstrate a commercially exploitable deposit that the licensee intends to exploit. The licence periods for exploitation licences are generally 30 years, but may be extended up to 50 years if justified by special circumstances.

16 For offshore production, how far seaward does the regulatory regime extend?

The Greenland regulatory regime for oil and gas exploitation (production) activities, including in particular the Mineral Resources Act, covers the Greenland land, territorial sea and continental shelf areas.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

As a starting point the Mineral Resources Act is applicable to both onshore and offshore regimes. Similarly, the licensing regimes are the same for both onshore and offshore. However, onshore exploration activities must also comply with the rules for field work and reporting regarding mineral resources in Greenland (which is now also in force for hydrocarbons).

There are no differences between the regimes governing rights to explore for and produce different types of hydrocarbons.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Any Greenland or foreign person or company may perform oil prospecting or exploration activities under a prospecting licence or an exploration licence, respectively, if the requirements for licensees and operators under such licences are met.

According to the Mineral Resources Act, an exploitation (production) licence may only be granted to a public limited company that only carries out activities under licences granted pursuant to the act. The company must, as a main rule, be domiciled in Greenland. The company must have the necessary (adequate) technical capability and experience and financial capability.

A company can be set up via online registration with the Danish Business Authority at www.webreg.dk. The company set-up cost and timing will differ depending on the type of company that is being set up.

The general selection criteria for granting exploration and exploitation licences are the company's technical capability and experience; financial capability; and intended exploration and exploitation activities (including its environmental protection practice and procedures).

19 What is the legal regime for joint ventures?

Companies that are co-licensees – members of a licence group – must enter into a JOA that is subject to the approval of the MLSA. The government has issued a model JOA that generally must be used with only minor amendments. The model JOA is available at MLSA's website. The formation and organisation of joint ventures is not governed by any statutory regulation under Greenland law.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

If a hydrocarbon deposit covers areas covered by several licences, the licensees must coordinate their exploration and exploitation activities and make an agreement on this coordination and connected matters. The agreement is subject to approval of the MLSA. If no agreement on a coordination agreement can be reached within a reasonable time, the Greenland government may stipulate the terms of such coordination.

If a hydrocarbon deposit covers areas situated in Greenland and another state, the Greenland government may, if an agreement is made with such other state on coordination of exploration and exploitation, order the licensee for the Greenland part of the deposit to participate in such agreement and stipulate the terms thereof.

Where resource, economic or social considerations mean (justify) that two or more hydrocarbon deposits should be exploited together, the Greenland government may issue an order to this effect following negotiations with the licensees. Under such order, a licensee may be ordered, against payment, to make processing and transport facilities available for such coordination. In the event of lack of agreement between the licensees on payment, the Greenland government determines the amount of such payment.

21 Is there any limit on a party's liability under a licence, contract or concession?

Liability is regulated in the JOA in respect of liability between the parties and in the licences and the Mineral Resources Act in respect of liability between the licensees and the government or third parties. The Mineral Resources Act states that a licensee shall be liable for any damages that arise from activities regarding the licence even though the damages are accidental. The general prerequisites for imposing liability under Greenland law must be fulfilled.

Liability, as it is regulated in the licences and the Mineral Resources Act, is joint and several. However, any licensee does have a right of recourse under the JOA against the other co-licensees that are jointly and severally liable in accordance with each licensee's interests share.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

It is common practice of the MLSA to require a parent company guarantee from licensees. The guarantee shall cover the fulfilment of all obligations towards Greenland and Danish public authorities as well as any liability in damages. The MLSA has on its website made available a 'Model Guarantee' form to be used for licences issued in the 2012/2013 licensing round.

The parental guarantee must be provided by the parent company or by the ultimate owner.

There are no limits to the parental guarantee. However, where the guarantee becomes payable due to obligations for which a company is jointly and severally liable with the other co-holders of the licence, the guarantee amount payable in respect of an individual obligation cannot exceed 200 per cent of the company's share of the relevant obligation.

There are no requirements for security deposits. However, pursuant to the Mineral Resources Act the MLSA may require additional security on a case-by-case basis.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

According to the Mineral Resources Act, it can be regulated in a licence to what extend the licensee must use Greenland labour, services and supplies.

Section 23 of the 2016 model licence stipulates that the licensee shall use and employ Greenland workers when carrying out activities under the licence. However, to the extent necessary for its activities, the licensee may use and employ other workers if Greenland workers with similar qualifications do not exist or are not available in Greenland.

Furthermore, the model licence stipulates that the licensee shall use Greenland enterprises, including contractors and subcontractors, suppliers and service providers. However, the licensee may use other enterprises for such contract work, supplies and services if Greenland enterprises are not technically or commercially competitive.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

See question 23.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

In accordance with the Mineral Resources Act, the model licence and the JOA the government must approve any direct or indirect transfer of a licence or part therein. The MLSA carries out this activity on behalf of the government.

The approval process includes submitting a written application for the MLSA approval of the proposed transfer. As part of this application the MLSA must obtain a copy of the transfer agreement, including all commercial and financial terms for the transfer, as well as any required information regarding the new licensee's technical expertise and financial base as mentioned under question 18.

The model licence does not require the applicant to reimburse the MLSA its costs in connection with approving the transfer (see question 7 on Government Order No. 24 of 30 December 2003 on reimbursement of expenses in connection with administration concerning mineral resource activities (reimbursement order).

The government has no direct pre-emptive rights. However, through its company Nunaoil it may acquire interests that are to be transferred to third parties. According to the JOA, a party that receives an offer from a third party to purchase its interest must first offer the interest to the other licensees on the same terms. Only then may the interest be transferred to the third party. As Nunaoil is a mandatory participant in all licences, the government indirectly holds pre-emptive rights with regard to the transfer of licences.

26 Is government consent required for a change of operator?

Change of operator is usually regulated in the JOA. The JOA stipulates that the selection of a new operator is subject to the consent of the MLSA.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

According to the Mineral Resources Act, any payment that has to be made to the government shall be regulated in the licence, namely, area tax, production tax and profit tax. The calculation basis of a potential payment to be made by an acquirer of a licence will therefore emerge from the terms of the licence. The standard terms state that the licensee must pay taxes according to Greenland legislation in force at any time.

The government has decided that a fee must be paid when a licence is transferred. The transfer fee of a prospecting licence in 2015 is 11,650 kroner and the transfer fee of an exploration licence is 19,600 kroner.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

In accordance with the Mineral Resources Act, specific provisions regarding the licensee's obligation in relation to decommissioning will be laid down in the individual licences. Pursuant to the model licence, the licensee shall remove all buildings, production facilities, installations, pipelines, storage and transportation facilities, etc, in and outside the licence area that has been established for the activities, unless the decommissioning in situ has been approved by the MLSA.

As part of the application for an approval of exploitation measures, the licensee must submit a proposed abandonment plan. The abandonment plan must be updated in relation to the activities carried out under the individual licence. When approving the abandonment plan, the Greenland government may impose conditions regarding health, safety and environmental obligations after decommissioning has been carried out. The Greenland government may lay down terms to ensure fulfilment of the licensee's obligations in relation to decommissioning, including provision of security.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

The model licence requires the licensee to draft an abandonment plan to be submitted for the approval of the MLSA, before hydrocarbon activities may commence. The plan must include provisions for financing decommissioning. These provisions should at least include the principles for calculating the annual amount to be set aside for decommissioning, as well as principles for ensuring that the funds are available when the time comes. The MLSA as yet has no practice or guidelines for approving this part of the abandonment plan.

Further, pursuant to the Mineral Resources Act, the MLSA may require additional security on a case-by-case basis, if the circumstances call for it.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Pursuant to the Mineral Resources Act, all main activities under hydrocarbon (oil and gas) exploration and exploitation licences require approval from the Greenland government.

Approval is therefore also required for the establishment and operation of any installations, including transportation pipelines, in connection with oil and gas activities under a licence.

Establishment and operation of offshore pipelines, which are not used in connection with licence activities, require approval of the Greenland government under the Continental Shelf Act.

The Maritime Act applies to transportation of crude oil by vessel. Activities covered by the act may be supervised by the Danish Maritime Authority and local authorities in Greenland.

Road transportation and traffic in Greenland are regulated by the Greenland Road Traffic Act.

There is generally no road transportation or rail transportation between towns in Greenland due to its geography and climate (including the Greenland ice sheet covering most parts of Greenland). Towns and settlements are generally situated in the vicinity of the sea or fiords, and most oil and oil products are transported by ship.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

There are no requirements for obtaining a permit or licence for transporting crude oil and crude oil products.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

The Mineral Resources Act sets out requirements in order to ensure that activities under licences are carried out properly as regards safety, health, the environment, resource exploitation and social sustainability as well as appropriately and in accordance with acknowledged best international practices for such activities under similar conditions.

Environmental impact assessments must be made and reports on such assessments must be submitted to and approved by the Greenland government before licences are granted and major activities under licences are commenced. Health, safety and environment plans must be made and implemented by the licensee and approved by the MLSA.

Non-compliance with health, safety or environment protection rules or provisions may be sanctioned with fines, etc, under the Greenland Criminal Act.

Under the rules on environmental liability and responsibility in the Mineral Resources Act, the responsible party means the party performing, being in charge of or supervising the performance of an activity subject to the Act. In practice, this may for instance be the operator. If said party is a party other than the licensee under a licence relating to the activity, the licensee is also responsible for the activity. The two parties are then jointly (jointly and severally) liable and responsible and also the so-called 'responsible party' or 'party responsible' under the rules on environmental liability and responsibility.

Pursuant to the Act, the party responsible for an imminent danger of environmental damage must immediately initiate necessary preventive measures that can avert the imminent danger of environmental damage and notify the Greenland government of the danger and the measures taken. The party responsible for environmental damage must immediately initiate any practically feasible measures that can limit the scope of the damage and prevent any further damage, and notify the government of the damage and the measures taken. The government supervises the performance of these obligations and may issue enforcement notices concerning the performance of the obligations and the adoption of measures in relation thereto.

The Mineral Resources Act provides that the party responsible for pollution or other environmental damage in connection with an activity under the act must compensate damage and loss caused by the pollution or environmental damage even if the damage or loss is accidental (with a few minor and restricted exceptions). Pursuant to licences and to terms of governmental approvals of activity plans, the licensee's liability and responsibility for pollution and other environmental damage and loss must be covered by insurance with sufficient and adequate cover.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The Mineral Resources Act sets out requirements in order to ensure that activities under licences are carried out properly as regards safety, health, the environment, resource exploitation and social sustainability as well as appropriately and in accordance with acknowledged best international practices for such activities under similar conditions. These general requirements also apply to oil and oil products produced in connection with activities under the act. At present there is no specific regulation regarding health, safety and environmental requirements applicable to oil and oil product composition, but such regulation may well be established in the future. The responsible authorities are the MLSA and the Greenland government.

Other general requirements for oil and oil products are set out in general environmental and health protection acts.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The ordinary government labour standards are generally also applicable to oil industry labour.

The general working environment rules in the Mineral Resources Act apply to oil and gas activities. It is uncertain whether the Working Environment Act also applies to oil and gas activities, both onshore and offshore. The Act regulates issues such as working periods, rest periods and

Update and trends

In September 2014, the government of Greenland announced licensing rounds in the 2016 application for and granting of exclusive licences for exploration and exploitation of hydrocarbons in onshore areas on Disko Island and in the Nuussuaq Peninsula, West Greenland. Interested parties can apply for exclusive licences for exploration for and exploitation of hydrocarbons for the three different onshore area licence blocks with a total onshore licensing area of 13,073 km^2. The application deadline is 15 December 2016.

Some of the big, international hydrocarbon licensees, such as Statoil, GDF Suez and DONG Energy, have handed back some of their exploration licences for Greenland's sea territory while other companies have reportedly obtained an extension of time for carrying out exploration activities.

The terms of the Model Licence for exploration and exploitation of hydrocarbons was recently amended with respect to, inter alia, the 'government take' model, reporting on direct and indirect taxes and Nunaoil's participation share of the licences. The changes will apply to the 2016 licensing round regarding the onshore areas on Disko Island and in Nuussuaq Peninsula, West Greenland.

personal protection equipment. It also sets out general requirements concerning the working environment, such as requirements regarding noise reduction, health service and emergency medical response.

Under the Mineral Resources Act, it may be stated in a hydrocarbon licence to what extent manpower from Greenland shall be employed, when personnel are hired. This is in accordance with a general Greenland Act on Employment, which gives preference to manpower from Greenland.

The Mineral Resources Act also states that to the extent necessary, the licensee may employ personnel from other countries, if manpower with corresponding qualifications does not exist or is not available in Greenland.

Hydrocarbon licences generally contain the said statements on employment of Greenland manpower.

As part of the 2011 IBA (Impact Benefit Agreement) for drilling activities offshore Greenland, Cairn Energy donated US$500,000 to an Education Fund that promotes education among Greenlanders to help them participate in the oil and gas industry.

Foreign employees must obtain a work permit in order to work in Greenland. The permit is granted on a case-by-case basis. Furthermore, the employer must have a permit from local authorities to hire foreign manpower.

Only citizens of Denmark, Finland, Iceland, Norway and Sweden are not required to obtain a work permit.

In 2012 the Parliament of Greenland passed an act on building and construction works related to large-scale projects (the Large-Scale Act). The act applies, inter alia, to projects concerning licences granted pursuant to the Mineral Resources Act with a cost of construction above 5 billion Danish kroner (in 2012). The act lays down minimum requirements with respect to foreign labour in large-scale projects for instance regarding minimum wage, working hours and collective agreements. Employers are allowed to deduct the cost of room and board as well as travelling expenses from the foreign workers' wages. Because Greenland is part of the Kingdom of Denmark, the Danish Parliament must approve changes to the Danish Aliens Act before the Large-Scale Act can come into effect.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

At present, there is no specific hydrocarbon (oil and gas) taxation regulation in Greenland. However, fees and other taxes are payable to the Greenland authorities in accordance with other legislation.

The Greenland Tax Act governs both personal and corporate taxation. The general corporate income tax rate is 30 per cent. The Greenland Tax Authority is responsible for collecting taxes and fees, except those governed by the Mineral Resources Act.

As mentioned above in question 14, licensees under exploitation licences must pay certain fees and surplus royalties to the Greenland government. In addition, the government-owned Nunaoil is a mandatory participant in any licensee group of oil companies and has a 'carried interest' during the exploration period.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

There is no statutory price-setting regime for crude oil or crude oil products in Greenland.

However, price-setting agreements must not be in violation of the general competition regulation in Greenland.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

Competition, market practice and merger control are generally governed by the Greenland Parliament Act No. 16 of 19 November 2007 on Competition and executive orders issued under the Act.

The Competition Act was revised as of 1 July 2014 to include a regulation on the clearance of mergers. The merging parties must inform the Competition Authority when a merger has taken place. After the notification has been made the Competition Authority will decide if the merger can be approved.

Decisions made by the Competition Council or the Competition Authority may be brought before the Greenland courts.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

Section 6 of the Competition Act provides that undertakings must not make agreements that restrict competition and that such agreement for example may be agreements that:

- set buying or selling prices or other business terms;
- limit or control production, sale, technical development or investment;
- divide markets or sources of supply;
- use different terms for goods or services of the same value in relation to business partners, which are thereby put in an inferior competitive position;
- set as a condition for making an agreement the acceptance of delivery of additional goods or services that, based on their nature or commercial practice, have no connection with the object of the agreement;
- coordinate the competitive activities of several parties by making a joint venture; or
- set binding resale prices or in any other manner seek to prevent that business partners deviate from guide prices.

Sections 7 to 10 contain various exceptions to the main rules in section 6.

The Greenland Competition Council may exempt agreements that otherwise would be considered anti-competitive. The parties to an agreement that wish to procure a governmental approval for such an agreement must notify the Competition Council. Notification is made by submitting an application to the Competition Authority.

In order for an agreement to be exempted, the agreement must contribute to strengthening the efficiency in production or distribution of goods or services or promote technical or economic development. In addition, consumers must be allowed a fair share of the resulting benefit. An agreement must not contain indispensable restrictions. Finally, the agreement must not afford the parties the possibility of substantially eliminating competition.

A notification has effect from the time when the Competition Authority receives a complete application. Any anti-competitive activities that take place after the Competition Authority has been notified and that are governed by the notified agreement will be exempted while the Competition Council is considering the notification.

Section 11 of the Competition Act states that one or several undertakings must not abuse a dominant position in a market and provides some examples of such abuse.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Regulatory policy and activity are generally not affected significantly by international treaties or other multinational agreements.

Greenland is not a member of the European Union, and EU rules generally do not apply to Greenland.

Denmark is a member of the World Trade Organization and its rules apply to Greenland.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

There are generally no special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals. However, a licensee under an exploitation licence must, as a main rule, be a public limited company domiciled in Greenland.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

There are no specific rules that apply to cross-border sales or deliveries of crude oil or crude oil products. The terms and conditions for such sales and deliveries are generally subject to the terms of the agreement between the parties and Greenland general contract law.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Historic background

Iraq's oil industry began in the 1920s with exploration and production by a number of companies acting through the Turkish Petroleum Company (later the Iraq Petroleum Company). The Iraqi National Oil Company (INOC) was formed in 1966 and the nationalisation of oil was completed in 1975. The Iraqi oil industry had been beleaguered by instability, wars and conflict, including the Iraq-Iran war, the first and second Gulf Wars and international sanctions such as the UN embargo following the invasion of Kuwait, and, of course, most recently the destabilisation of the region caused by the Islamic State of Iraq and al-Sham (ISIS).

Reserves and production

Iraq has the world's fifth-largest proven oil reserves (after Venezuela, Saudi Arabia, Canada and Iran). It is the second-largest crude oil producer in OPEC and is anticipated to be the leading OPEC producing country by 2017. Iraq had some 144 billion barrels of oil reserves as of 1 January 2015, which purportedly represents almost 18 per cent of proved oil reserves in the Middle East. Iraq has over 80 oilfields, including nine 'super-giant' fields (with over 5 billion barrels in reserve) and 22 'giant' fields (with over 1 billion barrels in reserve) spreading across the Zagros and Mesopotamian basins. The majority of Iraq's oil resources are concentrated in the south-eastern part of the country with a smaller proportion of the resources being concentrated in Kurdistan.

In December 2014, the Iraqi Minister of Oil stated that oil production had reached just under 4 million barrels per day (bbl/d), exceeding the country's previously highest recorded output level in 1979 of 3.8 million bbl/d. Iraq has passed Iran as OPEC's second-largest crude oil producer and is now the eighth-largest producer of oil globally. The recent surge in production is linked to higher recovery levels associated with the redevelopment of existing fields following the three 'oil' licensing rounds in June and December 2009 and May 2012 and increased production under oil contracts in Kurdistan. Iraq is targeting production exceeding 4 million bbl/d by the end of 2015. Oil production is now expected to reach 4.4 million bbl/d in 2019, compared with the May 2014 projection of 5.6 bbl/d.

Export and infrastructure

According to the federal budget, more than 90 per cent of Iraq's revenue will come from oil exports in 2015, on the assumption that Iraq will export an average of 3.3 million bbl/d at an average price of US$56 per barrel. Iraq's exports for February 2015 were 2.6 million bbl/d out of 2.8 million bbl/d produced.

Iraq relies heavily on the transportation system available in the country to export beyond its borders. However, various transportation routes are in substandard condition and have been damaged by insurgent attacks. Oil is exported from Iraq via two tanker terminals, the Al-Basrah Oil Terminal (formerly Mina al-Bakr) and the Khor Al-Amaya Terminal, with an estimated combined capacity of 1.7 million bbl/d. Tanker exports have suffered because of a spate of bad weather which affected the region in Spring 2015. Other export routes include the Kirkuk-Ceyhan Pipeline to Turkey (estimated at 500,000 bbl/d) and tanker truck routes to Jordan's Zarqah refinery (estimated at 10,000 bbl/d), which has been suspended since 2013 due to security threats. Iraq and Jordan signed an agreement to build an US$18 billion pipeline between the Iraqi province of Anbar to the Jordanian port of Aqaba, but security issues have prevented its construction so far. There is also a strategic internal pipeline operating in Iraq (Haditha–Rumaila–Basra) and the Zubair–Fao pipeline and storage project. Furthermore, the Iraqi government is planning a new pipeline linking the newly discovered oilfields in Maysan to storage depots at the Al-Fao terminal. There have also been plans put in place to create a unique integrated upstream-downstream project in Nasiriya to boost production and refining capacity.

Iraq has three major refineries: Daura Refinery (90,000 bbl/d), Basra Refinery (170,000 bbl/d), Baiji Refinery (310,000 bbl/d), and is further supported by several smaller refineries in Maysan and Erbil as well as seven smaller distillation units. The refinery in Baiji was captured by ISIS rebels in June 2014 but control was regained over it in April 2015. There are plans for an extra four refineries to be built by 2017, two of which (Maysan and Kirkuk) are planned to be awarded to investors, while the government is considering the construction of the other two (Nasiriya and Kerbala) via EPC contractors subject to the availability of funding. Nonetheless, front end engineering design of all four refineries has been prepared.

Industry participants

At present, the industry is divided between three INOC subsidiaries: North Oil Company; South Oil Company; and Missan Oil Company. Iraq's oil licensing rounds in 2009 and 2012 successfully awarded 13 contracts for the production and development of fields in an ambitious plan to increase the country's production to 12 million bbl/d by 2020. In the four licensing rounds between 2009 and 2012, the Iraqi Ministry of Oil signed technical service contracts and development and production service contracts with international oil companies (IOCs). Such service contracts include a state partner that varies subject to each case. IOCs with service contracts in Iraq include BP, CNPC, Lukoil, Eni, Occidental, Kogas, Shell, ExxonMobil, Petronas, Sonangol, Kuwait Energy, Dragon Oil, TPAO, Japex, Gazprom and Total.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Over 90 per cent of Iraq's domestic energy consumption needs are covered by crude oil, with the rest being supplied by natural gas and hydroelectricity. At present, Iraq's effective refinery capacity is at around 54 per cent of its total refinery capacity. This is because of operational inefficiency in the refineries themselves, and also because of the Baiji refinery being offline due to its capture by ISIS in June 2014 (it has since been secured, although remains offline at the time of writing). Iraq is able to produce enough heavy fuel oil to meet its domestic consumption, but not enough of other petroleum products, for instance, gasoline, and therefore it relies on imports of refined petroleum products estimated at 100,000 to 150,000 bbl/d for 2013 and 2014; or around 45 per cent of its domestic gasoline consumption and 25 per cent of its gasoil requirements. Iraqi domestic demand is expected to increase to more than 1.1 million bbl/d in the medium term. Iraq burns crude oil for power generation, averaging about 70,000 bbl/d in 2013 and 2014. The government of Iraq plan is to be self-sufficient by 2018.

The trend in Iraq's energy needs has largely been upwards since 2003, with petroleum, electricity and total energy consumption rising sharply over the same period. The exception to this trend is natural gas, as the unavailability of the necessary infrastructure presently leads to flaring of some 20 million cubic metres of gas per day in the south of Iraq. The Basrah Gas Company, a joint venture between the Southern Oil Company, Royal Dutch Shell and Mitsubishi Corporation was formed in order to treat and process raw gas produced within Basrah (Rumaila, West Qurna 1 and Zubair) and sell the processed natural gas for use in the domestic and export markets through the 25-year venture, which is estimated to cost US$17 billion.

As part of its plans to meet the demand for electricity, the Iraqi Ministry of Electricity plans to more than double its generating capacity by 2017 and has set a target to install 24.4 gigawatts of new generating capacity by 2017. Iraq plans to spend at least $27 billion by 2017 on developing its electricity sector, with about half of the money to be spent on upgrading the transmission and distribution systems. Iraq hopes to stop importing electricity by the end of 2016 if these expansions are made. Iraqi demand for electricity is projected to be 42 gigawatts by 2030, and according to the deputy prime minister of Iraq, power shortages are costing Iraq US$40 billion per year. Although some power plants may rely on gas rather than oil, until the supply and transportation of gas in Iraq improves, Iraq will continue, and increase, its reliance on oil. Due to such a shortage of electricity supply, many areas of Iraq rely on smaller generating units attached to homes, offices, factories and facilities, which also require an increasing supply of oil or diesel to operate.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

In order to meet the rising consumption and demand for energy within the internal market of Iraq and to be able to generate a sufficient amount of revenue for the government budget through measures of increased exportation, Iraq has a long term plan to maintain and upgrade its oil related utilities towards the improvement of its energy infrastructure. This plan includes networks of pipeline and roads, as well as the new Fao port which is planned to be a key port for Iraq.

Authorities are working towards putting in place schemes of investment in new technologies, and investments in increasing production capabilities take immediate priority in Iraq's energy policy goals. To achieve this goal, the Ministry of Oil has attracted investment from IOCs and foreign NOCs and will require further investment to be made by many other companies in the oil and gas sector.

4 Is there an official, publicly available register for licences and licensees?

A register of licences (ie, technical service contracts and development and production service contracts) and licensees is maintained at the Iraqi Ministry of Oil but is not generally publicly available. However, the Iraqi Ministry of Oil usually publishes the results of the oil licensing rounds and will make project licences available for view upon reasonable request.

5 Describe the general legal system in your country.

The legal system in Iraq stems from the Egyptian system, which itself is broadly based on the Napoleonic code. Iraq does not apply any religious provisions (Shari'a) in its civil, commercial and criminal codes.

All lawful contractual or property rights are enforced in Iraq by the judicial body, represented by the judicial courts and the Enforcement Directorate (affiliated to the Ministry of Justice). Domestic court judgments are implemented by the Enforcement Directorate. Iraqi legislation conditionally recognises foreign judgments, so long as they are evaluated as being enforceable by the relevant judicial authority so that to they may be approved for implementation by an Iraqi court of first instance (which asserts exclusive jurisdiction over judgments implemented in Iraq). This process is governed by the Iraqi Law of Implementing Foreign Judgments (Law No. 30 of 1928).

Iraq is one of the few countries that is yet to ratify the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention). Iraq is, however, a signatory to:
- the Arab Convention on the Enforcement of Foreign Judgments and Arbitral Awards of 1952 (Arab League Convention);
- the Riyadh Convention on Judicial Cooperation of 1983 (Riyadh Convention);
- the Arab (Amman) Convention on Commercial Arbitration of 1987 (Amman Convention); and
- the Geneva Protocol on Arbitration Clauses of 1923 (Geneva Protocol).

It is also rumoured that Iraq is due to ratify the Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States of 1965 although no official confirmation has been given at the date of publication.

Despite these treaties, there have been few foreign arbitral awards successfully enforced by the Iraqi courts in the recent past. Judges and commentators agree that the framework governing the enforcement of foreign judgments is applicable to arbitral awards and will be applied by the courts.

The Iraqi Civil Procedure Law (Law No. 83 of 1969) contains provisions governing arbitration based on Iraqi law, but it does not refer to foreign arbitral awards. However, practically speaking, most Iraqi legal experts agree that so long as the law applied to resolve the dispute is Iraqi law and that any other procedural laws or regulations applied do not conflict with Iraqi procedure laws, the foreign arbitral award could, in principle, be enforced in Iraq.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The legal framework regulating oil activities in Iraq is based on the Iraqi Constitution of 2005, especially in respect of encouraging local and international private sector involvement. A number of further laws have been issued to regulate, whether directly or indirectly, oil activities as follows:
- Ministry of Oil Law No. 101 of 1976 (as amended);
- Law No. 84 of 1985 for preservation and protection of Hydrocarbon Endowment;
- Law No. 27 of 2009 on the Protection and Improvement of the Environment;
- Public Companies Law No. 22 of 1997;
- Revolutionary Command Council Decision 273 of 2001 on the Rights of Disposal and its Regulations;
- Investment Law No. 13 of 2006;
- Oil Products Import and Sale Law No. 9 of 2006;
- Private Investment in Oil Refining Law No. 64 of 2007;
- Oil Products Anti-Smuggling Law No. 41 of 2008;
- Provincial Law No. 21 of 2008;
- International Oil Companies Income Tax Law No. 19 of 2010;
- Law No. 70 of 1983 on Documents Preservation and its regulations;
- Law No. 1 of 1984 for the Ministry of Oil; and
- Government Contracts Regulations No. 1 of 2014.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

Expropriation is prohibited by the Iraqi Constitution unless it is carried out in accordance with the special conditions regulated by Iraqi Expropriation Law No. 12 of 1981. Pursuant to article 23 of the Iraqi Constitution of 2005: 'expropriation is not permissible except for the purposes of public benefit and in exchange for fair compensation, and this shall be regulated by law'.

Additionally, Investment Law No. 13 of 2006 guarantees investors the non-seizure or non-nationalisation of their investment projects covered by the provisions of this law in whole or in part, except for projects that are subject to judicial judgment stipulating the seizure or nationalisation of such project (article 12.3). Furthermore, the Bilateral Investment Treaties (BITs) signed between Iraq and other countries explicitly stipulate the prohibition of expropriation for projects falling under the scope of a BIT. In order for the government to expropriate a licensee's interest, the government must:
- prove the existence of a public benefit resulting from the expropriation;
- have judicial judgment rendered in respect of the intended expropriation; and
- allocate fair compensation.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

Iraq's Ministry of Oil has central control and oversight over oil and gas exploration, production and development in Iraq and operates through the following Iraqi NOCs (noting their responsibilities):

- Ministry of Oil Headquarters – oversees all of the oil sector's activities;
- Oil Products Distribution Company – distribution of LPG and oil products;
- Midland Oil Company, Maysan Oil Company and South Oil Company – oil production in the rest of Iraq;
- North Oil Company – oil production in Kirkuk, Nineveh, Erbil, Baghdad, Diyala and part of Hilla and Kut;
- North and South Gas Companies – utilisation of natural gas available in Iraqi gas fields;
- Oil Pipelines Company – pipeline transportation of crude;
- Iraqi Oil Tankers Company – marine transportation of crude;
- Heavy Engineering Equipment State Company – provision of heavy equipment to the Ministry of Oil Companies;
- State Organization for Marketing of Oil (SOMO) – export of crude from Iraq;
- Oil Exploration Company – oil and gas exploration activities;
- State Company of Oil Projects – approvals of project plans and designs;
- Iraqi Drilling Company – well drilling, workover and completion; and
- Gas Filling Company – treatment of gas received from the North and South Gas Companies.

In addition, the following agencies are responsible for training and research:

- the Baiji Oil Training Institute;
- the Baghdad Oil Training Institute;
- the Petroleum Research & Development Center;
- the Karkuk Oil Training Institute; and
- the Basrah Oil Training Institute.

In July 2013, Iraq's cabinet (in session number 301) authorised the Ministry of Oil to establish three new public companies, specialising in oil services, crude oil transportation pipelines and gas transportation pipelines. The Iraqi Ministry of Oil recently announced plans to establish two state oil companies in the Nasriya and Wasit provinces. The KRG's Ministry of Natural Resources exerts control and oversight over the Kurdish region through the following entities:

- Kurdistan National Oil Company;
- Kurdistan Oil Trust Organisation;
- Kurdistan Exploration and Production Company;
- Kurdistan Organisation for Downstream Operations; and
- Kurdistan Oil Marketing Organisation.

9 What government body maintains oil production, export and import statistics?

Statistics on oil production, export and domestic consumption are maintained by the Ministry of Oil and provided monthly on its website.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

In accordance with the Constitution, title to oil reservoirs vests with the people, regions and governorates of Iraq via the Ministry of Oil. The legal framework is based on the Constitution and existing oil and gas legislation. Specifically, this requires the Council of Representatives' approval of contracts that deal with the country's oil. There remains some debate about whether service contracts signed by the Ministry of Oil in the first and second licensing rounds need to be approved by the Council of Representatives since they are tendered service contracts and do not give any ownership in the oil to the IOCs.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Ministry of Oil

Oil production is focused onshore in Iraq, with potential future exploration possibilities available in the western regions of the country. A number of development and exploration service contracts were granted during the second licensing round. This is largely due to the quality of data that was used to delineate Iraq's oilfields geographically, some of which are over 25 years old and based on two-dimensional seismic studies.

There are generally no restrictions or limits on production activity imposed by the Ministry of Oil. Due to the knowledge of the present locations of Iraq's existing oil reservoirs, the activities may only be limited by the individual considerations of IOCs in respect of the field area for which they are under contract.

KRG's Ministry of Natural Resources

The KRG's Ministry of Natural Resource considers that it is responsible for all of the exploration, development and production activities in the Kurdistan region of Iraq. Several onshore exploration, development and production projects are underway in Kurdistan. At present, there are no restrictions or limits on such activity.

The present split of production sharing agreements (PSAs) between exploration, development and production phases is two, seven and 28 years respectively. This offers some reasoning behind the need for the KRG to offer PSAs, which are generally considered to be more lucrative to foreign oil companies by allowing them to book reserves.

In December 2014, the Federal Oil Ministry (Baghdad) and the KRG reached a preliminary deal on oil exports and revenues (see question 12).

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

Oil exploration and production is governed by the Ministry of Oil; however, in Kurdistan the KRG exerts control through the Ministry of Natural Resources. The level and nature of regulation varies between the two bodies overseeing activities.

Ministry of Oil

Since 2009, the Ministry of Oil has held four licensing rounds, following which a number of technical services contracts (TSCs) for producing fields, and development and production services contracts (DPSCs) for development and producing fields, were granted to the winning bidders in the first and second rounds respectively. The third round focused only on gas fields, while the fourth round encompassed both oil and natural gas contracts. A fifth licensing round, initially scheduled for 2013, is expected to take place this year.

Under the terms of the TSCs, the IOCs work as unincorporated joint ventures with the Iraqi NOC, where the Iraqi NOC maintains at least a 25 per cent participating interest in each project as the state partner. The TSCs further provide that Iraq will compensate the IOCs at an agreed rate per barrel (at present, varying from US$1.4 to US$6) subject to conditions such as the attainment and maintenance of target production levels over set periods of time. Iraq will receive initial revenue from the contract signing fees paid by the IOCs and subsequent revenue from joint venture fees paid to Iraqi NOCs by way of taxes on the per barrel fee paid to the IOC, as well as revenues from the sale of oil.

The terms of the DPSCs vary, as the IOCs can form incorporated joint ventures with the Iraqi NOCs at the Iraqi NOCs' discretion. The only other variant of the DPSCs is the timing of remuneration for the IOCs.

Production levels may be subject to adjustment if Iraq has to fall back within the OPEC quota limits.

KRG's Ministry of Natural Resources

The Ministry of Natural Resources has signed more than 49 PSAs with IOCs. Terms of such PSAs are generally more lucrative as the IOCs receive remuneration based on the level of risk associated with the area (high, medium or low). Similarly to the TSCs and DPSCs, the stake maintained by the KRG in each PSA ranges between 20 and 25 per cent.

In December 2014, the Federal Oil Ministry (Baghdad) and the KRG reached a preliminary deal on oil exports and revenues. The two sides agreed that:

- the KRG would give 250,000 bbl/d of the crude oil produced in its territory to Iraq's SOMO at the Ceyhan terminal to market the crude;
- Iraq (Baghdad) would export 300,000 bbl/d of Kirkuk crude through KRG's pipeline to Ceyhan; and
- Iraq (Baghdad) will resume federal payments to the KRG that will amount to a 17 per cent share of Iraq's federal budget and pay KRG's peshmerga military forces $1 billion.

The deal allows SOMO to reclaim marketing control over much of Iraq's northern crude exports.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The Iraqi federal government has the right under Iraqi law to participate in TSCs through state companies. According to the State Companies Law No. 22 of 1997, there are no statutory restrictions on state companies participating in exploration and production agreements such as TSCs. In practice, this has been seen in a number of TSCs through the award of a 25 per cent carried interest in contractor consortiums to Iraqi state entities. The PSAs entered into by the KRG generally provide for KRG participation (via a carried interest).

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

There are no royalty provisions under the present Iraqi legislation or the Ministry of Oil's TSCs and DPSCs.

The draft Hydrocarbon Law provides for a 12.5 per cent royalty at a federal level; however, this has not yet been approved by Iraq's Council of Representatives. TSCs granted by the Iraqi federal government included a tax stabilisation provision ensuring that taxes are capped at 35 per cent pursuant to Law No. 19 of 2010.

The royalty provisions under the KRG's model PSA are set at 10 per cent for export of crude oil and natural gas. However, it is possible for individual PSAs to provide for different terms.

15 What is the customary duration of oil leases, concessions or licences?

It is customary for the Ministry of Oil's TSCs and DPSCs to have a 20-year term; however, the Crude Oil Refining Investment Law (No. 64 of 2007) allows a 50 year licence.

The KRG's Ministry of Natural Resources' model PSAs have terms ranging from five to 37 years, depending on the stage of the field and the number of extensions sought. Generally, the exploration stage of the field will have a term of five years, which may be extended by a maximum of two years. At the production stage, the term is 20 years, with a five-year extension as an automatic right and a further discretionary five-year extension.

16 For offshore production, how far seaward does the regulatory regime extend?

There is no known offshore production in Iraq.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

Given that there is no known offshore production in Iraq (block 18 is a new offshore block in the Arabian Gulf and will be announced soon by the Ministry of Oil), Iraqi law does not provide a distinct legal regime for offshore production. However, there are some differences in the responsibility and scope of work between inside the battery limit, which is responsibility for within production facilities only, and outside the battery limit, which includes responsibility for utilities and piping, depots, power generation, water treatment and so on.

There are some differences in applicable provisions relating to the exploration and production of oil as opposed to gas resources. This can be noted mainly in the different contractual obligations found in the service contracts awarded to IOCs in the past few years. They are governed by the protocol set by the Ministry of Oil and affect the remuneration factor.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Exploration and production activities may be performed by Iraqi NOCs, IOCs and other NOCs on behalf of the Ministry of Oil, subject to approval by the Ministry of Oil. Non-Iraqi entities are commonly contractually required to establish a presence in Iraq within a short period from the effective date of their relevant contract with the government. Common establishment options for IOCs include the registration of a local branch. In the Kurdish region, IOCs may conduct such activities with approval from the KRG's Ministry of Natural Resources. Companies pre-qualify to bid in the oil licensing rounds. Although the bidding processes for the first four rounds were conducted in a transparent way, via tender protocols available to all bidders, the final details of the contracts were provided to the public on an ad hoc basis.

Due to the political tension between the national government and the KRG in relation to the oil in the Kurdistan region, any company that was a participant in the territory of Kurdistan without the Federal Ministry of Oil's approval or coordination was blacklisted and prevented from bidding for any of the Ministry of Oil licences. However, the respective authorities appear to be taking steps towards a degree of flexibility following the December 2014 Baghdad/KRG agreement (see question 12).

19 What is the legal regime for joint ventures?

The legal regime for joint ventures varies under the terms of the first and second round licences awarded by the Ministry of Oil.

First oil licensing round

Under the TSCs granted in the first round, the parties were required to establish an unincorporated joint venture between the successful bidders and their state partner. The unincorporated joint venture would be the operator, with a lead contractor designated for supervision and management of the operating entity. The unincorporated joint venture is in turn governed by a joint management committee (JMC).

Second oil licensing round

The DPSCs awarded in the second licensing round followed a staged structure. The first seven years of the DPSC followed the same structure as the TSC model. However, once the applicable rate of return factor is achieved, the Iraqi NOC has the discretion to rearrange the structure of the joint venture and convert it to an incorporated limited liability company formed under the laws of Iraq. The supervisory function will in turn be transferred from the JMC to the board of directors of the incorporated entity. However, it is highly likely that the effective control of the entity will follow the JMC structure, where control of operations is maintained by the Ministry of Oil through its state oil entities.

Third licensing round

Since the first two licensing rounds did not award any contracts over gas fields, a third licensing round was subsequently held solely covering gas fields. Three fields were included in this round:

- Ukaz (located in the Anbar Governorate), the largest of the three fields, awarded to KOGAS (50 per cent) and KazMunaiGas (50 per cent);
- Al-Seeba (located in the Basrah Governorate), awarded to Kuwait Energy (60 per cent) and TPAO (40 per cent); and
- Al-Mansouria (located in the east of Iraq), awarded to TPAO (50 per cent), Kuwait Energy (30 per cent) and KOGAS (20 per cent).

The estimated reserves in the three fields exceed 11 trillion cubic feet of gas, which constitutes around 10 per cent of the Iraqi confirmed natural gas reserves.

Fourth licensing round

The Ministry of Oil held its fourth round in June 2012. There were 12 fields on offer, seven of which were gas fields and the remainder were oilfields. Out of the 12 exploration blocks on offer, only four were awarded (one of them only had prospects of gas). The results of the four licences were as follows:

Field	Oil/gas	US$ per barrel	Operator	Partner
Diyala & Wasit	Gas	5.4	Pakistan Petroleum (100 per cent)	
Basra	Oil	6.2	Kuwait Energy (70 per cent)	Dragon Oil (30 per cent)
Muthanna & Thiqar	Oil	6.0	Lukoil (60 per cent)	Inpex Corp (40 per cent)
Muthanna & Najaf	Oil	5.0	Bashneft (70 per cent)	Premier Oil (30 per cent)

Kurdistan PSAs

The structure of joint ventures under the PSAs signed with the KRG does not provide a set structure to be adopted by the licensees. Accordingly, licensees decide on the structure that will most appropriately align their interests in terms of risk and other commercial factors. The most notable incorporated joint venture is TTOPCO between Genel Enerji and Addax Petroleum in the producing Taq Taq field. However, a number of other incorporated and unincorporated joint ventures have successfully bid for KRG licences.

Any incorporation option exercised by joint ventures in Iraq would fall under the Iraqi Companies Law No. 21 of 1997, as amended by CPA Order No. 64 of 2004.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Unitisation is dealt with in the draft Hydrocarbon Law (not yet agreed) and the KRG Oil and Gas Law of 2007. Unitisation can apply to domestic (either within Kurdistan or in Iraq), cross-border and cross-regional (ie, between Iraq and Kurdistan) reservoirs.

The proposed position under article 16 of the draft Hydrocarbon Law is that the Federal Oil and Gas Council will be required to approve any proposed unitisation measures sought in respect of domestic and cross-regional unitisations.

Cross-border unitisations will be dealt with by the Council of Ministers of Iraq to ensure that the interests of Iraq are adequately protected.

Article 47 of the KRG Oil and Gas Law of 2007 has also provided a legal position in relation to unitisation that would be of significant relevance to the PSAs awarded by the KRG.

The KRG's involvement varies depending on the situation and the proposed unitisation. The KRG Minister may be solely responsible for domestic unitisation, whereas the Minister will need the approval of the KRG for cross-regional unitisation, and the KRG and federal government will be required to negotiate on cross-border unitisations.

21 Is there any limit on a party's liability under a licence, contract or concession?

The limit on a party's liability is generally subject to both parties' consent, which is normally stipulated in their agreement. Under Iraqi Civil Law, parties to a contract shall be held liable to the extent described in their contract.

Normally, parties are solely liable. In order for the parties to be considered jointly and severally liable, the Iraqi Civil Law (article 315) requires an explicit provision in an agreement stipulating that liability is joint and several among the parties. Furthermore, as a subcontractor is not a party in the original contract, the project owner (being the state) may not make demands on a subcontractor for project implementation, and must make it through an indirect claim against the primary contractor.

Under Iraqi commercial law, whenever the act is classified as commercial, the liability resulting from such an act is deemed joint and several even in the absence of any explicit provisions. Importantly, TSCs and DPSCs generally stipulate that the 'contractor' (ie, IOCs and the state partner) shall be jointly and severally liable for all obligations of the contractor under the respective TSC or DPSC.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Parent company guarantees are commonly required under TSCs and PSCs. Publicly available templates indicate that the parent company shall unconditionally and irrevocably guarantee its relevant affiliate in the performance and fulfilment of its obligations under the contract.

The common practice is that the parental guarantees are immediate and unlimited, unless otherwise agreed. It is generally the parent company with sufficient financial standing that will provide the parental guarantee. The amount of security deposit payable by the parent company or the affiliate is usually defined by the contract.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

Companies operating in Iraq are subject to Law No. 11 of 2010 for the protection of local products. This law aims to limit imports of goods that are locally manufactured and authorises the Minister of Industry and Minerals to supervise the implementation of its provisions. Further, Customs Tariff Law No. 22 of 2010 imposed relatively high new rates (as compared to previously adopted rates) on imported goods that are locally produced.

The local workforce benefits from protection vis-à-vis foreign workers. Article 12 of the Iraqi Investment Law No. 13 of 2006 states that the investor:

- shall guarantee that the priority in recruitment and employment shall be given to Iraqi workers; and
- has the right to employ and utilise non-Iraqi workers only when it is not possible to employ an Iraqi with the required qualifications and capabilities.

TSCs and DPSCs generally stipulate local content requirements such as priority to be given to Iraqi workers for employment and locally produced goods and services, an obligation to provide training to Iraqi workers and the transfer of technology to Iraq. However, due to the ambiguity of these contractual provisions, there has been an increase in the number of disputes on their interpretation and enforcement.

In respect of the minimum capital required, for the foreign investor to acquire an investment licence and benefit from the privileges that come with it, article 7 of Investment Law No. 13 of 2006 requires a foreign investor's project to have a capital of not less than the minimum amount determined by the Council of Ministers.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

In addition to the local content requirements set out in the answer to question 23, companies operating in Iraq are required to be locally registered in accordance with Regulation No. 5 of 1989 on Branches and Offices of Foreign Companies and Economic Establishments. A representative office is considered a non-trading branch of a company, whereby it has a legal presence in Iraq, but is not allowed to engage in any trading activities. According to Regulation No. 5 of 1989, representative offices are allowed to conduct market or feasibility studies, or both, advertise the parent company's products and services, and facilitate communications with the parent company. The parent company remains fully liable for all the obligations of its representative office.

Once a contract or a subcontract with the Iraqi government is signed, a parent company with a representative office in Iraq should (within 60 days of signature date) apply for the conversion of the representation office into a branch.

A branch in Iraq has no separate legal personality from the parent company. Liability flows back to the parent company and the representative office may carry on business activities in Iraq in the name of the parent company. The parent company may assign employees to the branch to provide services to it as 'temporary experts', and the branch can actually sponsor their visas. However, it is important to consider that those experts must comply with all applicable laws and regulations in Iraq as if they were employed by the branch and to act under the control supervision of the branch manager as their local sponsor before the authorities. Furthermore, the experts might be required to prove to any relevant authority their employment with the parent company and their assignment to work for the branch.

Each company employee must have an employment contract, sponsored by the company for the relevant visa, residency, work permit, income tax and social security deductions.

Each representative office must be registered for the following:

- corporate income tax filing with the General Commission for Taxes – Corporate Tax Department (the employer is responsible for withholding and remitting employee income taxes);
- employee income tax filing with the General Commission for Taxes – Employee Wage Withholding Department (employee income taxes are assessed on a sliding scale from 3 per cent to 15 per cent); and
- social security filing with the Social Security Administration of the Ministry of Labour and Social Affairs (social security rate is 17 per cent of the base salary where the employer has an obligation to withhold 5 per cent of employee base salary on account of social security and the employer must contribute 12 per cent to employee's social security).

Failure to withhold or remit the above subjects the employer (and not the employee) to penalties and obligations to pay taxes and penalties. Employment laws such as the requirement to pay social security are considered a matter of public order and may not be contracted around.

Iraqi laws expressly state the criminal liability of corporate entities. Hence, corporate entities may be subject to penalties and charges in respect of any offences stipulated under the Iraqi laws committed by their employees, directors or agents working for them or on their behalf, provided that the relevant conditions are met.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Given the contractual nature of the TSCs, there are no statutory provisions that can be entirely relied upon to provide a comprehensive view of required consents and pre-emptive rights. Any such assessment must be made on a case-by-case basis depending on the relevant contractual terms. As a common practice, it is expected that major transfers of interests under TSCs will require some form of political approval, even if such approval is obtained internally by the relevant state entity.

Under applicable Iraqi laws, there is no clear and comprehensive legal system governing the transfer of interests or change of control. It is largely governed by the provisions of the service contracts granted by the Ministry of Oil and by the protocol. Article 24 of Investment Law No. 13 of 2006 states:

> *First: the investor, with the approval of the Commission, may sell exempted fixed assets or relinquish them to another investor benefiting from the provisions of this law, provided that the investor uses them in his project. Second: the investor, after informing the Commission, may sell the exempted fixed assets to any person or to other projects not subject to the provisions of this law after paying the outstanding fees and taxes.*

It is important to recognise whether the contractor's reputation was a factor considered in granting a licence. This is because the Iraqi Civil Code states in article 888 that '… the standing (reputation) of the contractor in the market and not his personal qualities will be assumed to have been taking into prime consideration when concluding the contract'. This allows rescission of the contract if the contractor's reputation has been adversely impacted or changed.

26 Is government consent required for a change of operator?

Given the contractual nature of the TSCs, government consent for a change of operator requires a case-by-case assessment depending on the relevant contractual terms.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

Normally, there are no fees or taxes levied on a transfer or change of control in a company if it occurs through a standard transfer of shares via a simple sale-purchase mechanism. However, this may differ depending on the process by which the shares are transferred. If the shares are represented as stocks and foreign shares, the transfer of these shares in Iraq will be subject to Iraqi Stamp Duty Law No. 71 of 2012, which states in article 4 that the stocks and foreign shares being sold shall be subject to a stamp duty of 0.005 per cent of their value, to be paid jointly by the seller and buyer. Further, article 28 imposes a fine of 10 per cent of the stocks and foreign shares value to be paid by parties who violate the above-mentioned article 4. Therefore, investors carrying out business in Iraq are advised to obtain, in advance, a written attestation from the tax authority in which the tax treatment applicable to the sale of shares is stipulated.

Notwithstanding the above, in general, the oil contracts (TSCs and DPSCs) executed between the government of Iraq and IOCs do not make any reference to taxes or fees applicable to the transfer of shares and change of control. Despite the absence of such a reference, the transfer of shares or change of control may be subjected to taxes. In fact, the transfer of shares may provide for a high margin of profit for the seller. Therefore, the profit realised as a result of a transfer of shares can be considered as an income under Iraqi law and, as a result, become subject to tax at a rate of 15 per cent.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

Decommissioning of oil and gas facilities and pipelines is governed by regulations issued by the Iraqi Ministry of Planning. In recently granted service contracts, common contractual obligations provide that on the termination of the contract or relinquishment of part of the contract area, the IOC or contractor shall remove all equipment and installations in a manner agreed with the relevant national oil company (eg, South Oil Company) pursuant to an abandonment plan, which is to be agreed. The IOC also has to issue preliminary acceptance certificates and final acceptance certificates in relation to the completion of projects to the national oil company. This process may occasionally involve third parties, including insurers such as SGS or Lloyd's.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

Other than a performance bond guarantee which is imposed on the contractor over the contract lifespan amounting to 5 per cent of the total contract value, there are no known statutory or publicly known contractual requirements for the provision of security deposits in respect of future decommissioning liabilities under the contracts entered into by the Iraqi federal government.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The transportation of crude oil and associated products is by pipeline, marine vessel and tanker trucks owned and maintained by the Oil Pipelines Company, a state entity under the Ministry of Oil. Pipelines are also overseen by the Ministry of Natural Resources in Kurdistan, but are ultimately owned by the state entity. The following laws regulate (to a certain extent) the transportation of oil:

- Law No. 9 of 2006 on Importing and Selling Oil Products; and
- Law No. 41 of 1985 on Countering Oil and Oil Products Smuggling and its regulations.

Part of the local transportation of oil products has been undertaken by mixed sector joint stocks or by private companies.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

If the transportation is not undertaken by the state entity, the requisites for obtaining a permit as all transportation depend on each transportation contract, but in general the transportation company must be duly licensed and technically capable of performing the transportation. Further requirements might be called for based on instructions from governmental offices and may require follow-up with the Ministry of Oil or other ministries.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Iraq

For the most part, petroleum sector operating companies impose health, safety and environmental (HSE) requirements on their contractors, which conform to best international petroleum industry practice, as well as Iraqi legislation. This requires the implementation of comprehensive occupational safety programmes, as well as environmental impact studies. Rules governing drilling rigs, production platforms, refineries, pipelines and service stations are largely the responsibility of the Ministry of Oil. Violations can result in denials of permits to operate. Environmental clearance is required before any modernisation or expansion project for petroleum operations may take place. The government must also approve the operator's contingency plan for dealing with any crude oil spill, fires, accidents and emergencies prior to conducting any drilling activities.

Kurdistan region of Iraq

The majority of HSE requirements are found in the PSAs, under which contractors are obliged to use reasonable endeavours to comply with prudent international petroleum industry practice. The KRG's Oil and Gas Law of 2007 requires that applicants for a PSA include conditions for securing the health, safety and welfare of persons involved in, or affected by, the petroleum operations, as well as provisions for protecting the environment and preventing, minimising and remedying pollution and other environmental harm from the petroleum operations. IOCs are also required to commit to the payment of an agreed amount into an environment fund administered by the KRG for the exclusive benefit of its natural environment.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

Iraq

Under the Iraqi Law of Environmental Protection and Improvement (Law No. 27 of 2009), before any activity is carried out that may affect the environment, consent must be obtained from the Ministry of Environment. Operators are forbidden to permit hazardous waste, and they must conduct activities with due care to prevent serious and irreversible damage to the environment, taking all steps necessary to minimise the pollution of soil, air, water and groundwater basins. Further, operators must dispose of the saline water that accompanies the extraction of raw oil in an environmentally secure way and provide the Ministry of Environment with information relating to any fires, explosions, oil and gas leakages that occur from the wellhead or pipelines, as well as the procedures taken for remedying any environmental damage. Any organisation found to be polluting the environment will face sanctions that may include a combination of forced closure of the offending facility, fines of up to 20 million dinars or imprisonment, with penalties increasing for repeat offenders.

The Minister of the Environment may appoint an environmental inspector to assess sites, buildings and installations where petroleum operations are being conducted, as well as assets, records and data kept by the holders of exploration and production rights relating to petroleum operations.

Kurdistan region of Iraq

Under the KRG Law of Environmental Protection and Improvement (Law No. 8 of 2008), all organisations performing an activity that affects the environment must produce an environmental impact study and submit it to the KRG Ministry of Environment prior to commencing such an activity. While there are provisions in the Law to incentivise the development of ideas to improve the environment, there are also sanctions available to the Ministry when organisations find themselves in breach of the law. These sanctions include the forced closure of the facility or fines of up to 10 million dinar or imprisonment, or both.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Iraq is a member of the UN International Labour Organization (the ILO) and follows the published resolutions and guidelines that are promoted by the ILO. The Iraq Labour Code (Law No. 71 of 1987) and the Civil Service Law (Law No. 24 of 1960), which governs public sector employees, apply. The basic provisions of the Labour Code stipulate that the contract of employment should:

- be in writing in Arabic;
- allow for a minimum of 20 days' paid annual leave;
- allow for at least one rest day per week; and
- allow the employee a minimum of 30 days' paid sick leave.

The Labour Code guarantees the right to work to all citizens without any discrimination based on sex, race, religion or language.

Foreign workers are eligible to work in Iraq after successfully applying for a worker visa at the Ministry of Interior and a work permit at the Ministry of Labour and Social Affairs. Breaches of the Labour Code in relation to foreign nationals (non-Arab) can lead to a prison sentence and a fine, whereas breaches of the Labour Code in relation to Arab workers will make a person or entity liable to fines only.

The general trend in Iraq is towards increasing the ratio of Iraqi employees to foreign nationals. In practice, the Ministry of Labour and Social Affairs requires at least 50 per cent of Iraqis to be employed in government contracts undertaken by employers. Article 12 of the Investment Law (No. 13 of 2006) requires Iraqis to be prioritised for employment, and while article 3 of the Crude Refining Investment Law No. 64 of 2007 requires 75 per cent of the workforce to be Iraqi. Certain visa and work permit restrictions are starting to limit the inflow of foreign labour into Iraq, particularly foreign personnel who arrive without having first secured a job. The Ministry of Interior requires any company seeking visas for their foreign employees to make a declaration guaranteeing that the relevant employees shall continue to be employed by the relevant company and shall not seek to work with any other company while in Iraq. Additional restrictions may apply to certain nationalities due to security concerns and will require a higher level of approvals (and thus additional delays) in order to issue visas.

The authorities have stressed that companies shall be liable for any incorrect information communicated to the authorities on the number of foreign workers employed and the work carried out by them. In addition, companies must ensure that the foreign workers depart from Iraq at the end of their work.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Federal Iraq

The tax regime in Federal Iraq is defined under the Income Tax Law (No. 113 of 1982, as amended). The corporate tax rate for an oil and gas company in Iraq is set at 35 per cent; this rate also applies to subcontractors and supporting companies working in the oil and gas sector. Other potentially applicable taxes include:

- capital gains – 15 per cent;
- interest charged at the applicable income tax rate – 35 per cent for oil and gas companies;

Update and trends

Iraq is firmly committed to attracting foreign investment, particularly in sectors such as energy, defence and housing (to house the estimated two million people who were displaced in the war). The Iraqi Investment Law (No.13 of 2006, as amended) is the statutory basis for allowing certain exemptions to foreign investment, and the trend is to continue to develop the Investment Law to attract long-term investments into Iraq. For instance, goods imported for construction projects are tax exempt. Further exemptions are also granted on land acquired for housing developments, using Iraqi insurers to insure development projects, and hiring foreign labour to work alongside domestic labour, to name a few. Iraq is, however, still beleaguered by the threats posed to its security by ISIS and regional instability. Although at the time of writing, all of Iraq's oil infrastructure is secure, the opportunity for ISIS to secure funding presented by the capture of some of Iraq's oil infrastructure will mean that Iraq's oil infrastructure will continue to be a target for capture.

Iraq's federal budget deficit for 2015 is estimated to be around 23 trillion dinars (around US $100 billion). Spending is expected to be high, as a result of the recent plunge in oil prices, and is being financed through a mixture of treasury bonds and bank lending. The recent deal brokered by Baghdad and the KRG also means that both sides can ensure their focus is on attracting foreign investment, and the passing of the 2015 budget (with agreement from both Baghdad and the KRG) was in itself a major step forward towards addressing Iraq's fiscal concerns.

According to recent estimates, Iraq's population is around 36 million people, with an annual average growth of 2.6 per cent. Notably, GDP per capita is around US$15,000 per annum, creating a higher domestic demand for different types of commodities, goods and services in Iraq.

- stamp fees imposed on any contract – 0.2 per cent of the contract value; and
- social security contribution for employers in the oil and gas sector – 25 per cent.

There are also specified depreciation rates for different types of oil and gas assets, for example, high-pressure vessels, electrical systems technology, machinery and equipment, liquid gas tanks, precision equipment and bulldozers.

Relief on losses is available and such losses can be offset against future profits (subject to 50 per cent of taxable income) for a period of five years. However, no losses can be offset against previous income receipts.

Iraq has entered into double tax treaties with Egypt, Jordan, Libya, Somalia, Sudan, Syria, Tunisia and Yemen.

Kurdistan region of Iraq

In Kurdistan, the KRG's model PSA provides for a corporation tax rate of 40 per cent or below, in line with the KRG's Income Tax No. 5 of 1999. The KRG's Oil and Gas Law provides for a number of other tax charges, which include:

- surface tax;
- personal income tax;
- corporate income tax;
- customs duties and any other similar taxes;
- windfall profits or additional profits tax; and
- any other tax, levy or charge expressly provided for in a petroleum contract.

The General Commission of Taxation is the government body in charge of taxation in federal Iraq. In the Kurdistan region, the government body in charge of taxation is the Income Tax Directorate.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

At present, there is no price-setting regime as the export and sale of all crude oil and crude oil products within Iraq, the territory of Kurdistan and internationally fall under the authority of SOMO. Iraq is a member of OPEC; at present, Iraq produces 2.6 million bbl/d although it is not subject to OPEC's production and export quotas.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

In Iraq, the extraction, transportation, refining or marketing of crude oil or crude oil products is controlled and managed by government entities that regulate the market of crude oil and crude oil products. Given the lack of pure private initiative in businesses related to crude oil and crude oil products (such businesses are controlled and managed by government entities), a Council of Anti-Competitive and Anti-Monopoly Affairs has been established which falls under the Iraqi Council of Ministers' control and supervision. This body regulates anti-competitive practices within the Iraqi market and has powers to sanction companies in breach of the relevant laws (the Anti-Competitive and Anti-Monopoly Law No. 14 of 2010). SOMO is the crude oil marketing authority that monopolistically regulates the entire marketing process of crude oil.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

See question 37.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Although a member of OPEC, Iraq is not subject to the organisation's production and export quota. Iraq's ambition of reaching a 12 million bbl/d production target may prove to be a sticking point during negotiations with OPEC if Iraq is to become part of the OPEC production quota system. OPEC intends to discuss Iraq's compliance with the quota system when oil production reaches 4 to 5 million bbl/d, and the decision will be up to the 12 member states.

Iraq is also a member of the following organisations, which may affect regulatory policy: the Arab League; the Arab Monetary Fund; the Council of Arab Economic Unity; the International Atomic Energy Agency; the International Monetary Fund; and the Organization of Arab Petroleum Exporting Countries.

To date, Iraq has signed 35 bilateral investment treaties with different countries (including France, Germany and Italy) and nine multilateral investment protection agreements (including arrangements on investments promotion and protection within the Arab League), in addition to executing arrangements and memoranda of understanding with many countries.

Iraq is also a signatory to bilateral free trade agreements with 12 countries: Algeria, Egypt, Jordan, Lebanon, Oman, Qatar, Sudan, Syria, Tunisia, the United Arab Emirates, the United States of America and Yemen.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Foreign companies are generally able to invest freely in corporate interests that may be oil-related by incorporating an Iraqi legal entity or establishing a branch office if they have a contract with a state entity (either directly or indirectly). Each investment process will be subject to the investment licence or contract.

There are also specific requirements and incentives outlined in the Law of Private Investment in Crude Oil Refining (Law No. 64 of 2007 as amended in 2011), which was implemented by Instructions No. 1 of 2009, including the following requirements:

- Iraqi personnel shall comprise 75 per cent of the investor company's workforce;

- the investor company shall construct (at its own expense) a pipeline from the nearest appropriate delivery point, unless it was agreed otherwise;
- the investor company is prohibited from trading in crude oil and oil products; and
- products from the refinery shall comply with all environmental and industrial safety laws and regulations.

Law No. 64 of 2007 as amended in 2011 also includes the following incentives:

- a foreign company investing in Iraq may be granted a lease of up to 50 years for the land used for the refinery;
- the Ministry of Oil may enter into a crude supply agreement with the investor at a price equal to 5 per cent less than the international export price;
- different schemes can be applied to investors such as BOO, BOT, processing and tolling fees;
- the Ministry of Oil ensures the market for the investor's production through offtake agreements at international market prices; and
- there is the possibility of receiving a 10-year tax exemption from the beginning of operations in addition to a three-year import duty exemption.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Any sales (whether domestic or export) are made by SOMO, the only legal entity permitted to trade in oil under Iraqi law. Due to the monopoly of the export market of crude oil, there are no special rules that apply in this instance.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Italy has always been highly dependent on conventional energy sources and imports to cover its energy needs. Hence, although Italy is a relatively small producer of crude oil, it has always regarded its domestic oil production as very important for the security of oil supply and for the purpose of reducing dependence on foreign sources.

Italy is undoubtedly competitive in respect to production costs, which are lower than in other comparable countries. In 2014, Italian proved recoverable oil reserves amounted to 840,807 million tonnes, and, according to the estimated capacity of recently drilled wells in southern Italy, reserves may increase up to 930,090 million tonnes.

Although there have not been new discoveries of oilfields since 2008, oil production in 2014 has increased up to 5.75 million metric tonnes, 2 per cent more than 2013 (5.48 million tonnes). Such a positive result is mainly due to the exploitation of fields in the Basilicata region.

According to the data released by the General Office for Energy and Mineral Resources (DGERM) of the Ministry of Economic Development, in Italy, there are 894 producing wells (532 onshore and 362 offshore). Of these, 695 wells produce gas while the remaining 199 are mineralised by oil.

With a view to increasing domestic production, the Italian government has made considerable efforts to simplify the administrative procedures for the installation of oil production units, and has played an important role in liaising with the developers and the local authorities (in particular the regions) involved in the granting of permits and authorisations. In accordance with Law No. 239/2004, new administrative instruments named 'single procedure' and 'conference of administrations' have been introduced in the licensing process for the purpose of simplifying and speeding up such process. Other encouraging developments for the promotion of the oil extracting businesses are:

- incentives for the development of secondary fields;
- incentives for geophysical studies; and
- draft regulation on the decommissioning of offshore facilities.

These governmental initiatives have led to a small but important increase of exploration and production activities in Italy.

In this respect, it is worth mentioning two important oilfields that will further support the oil-extracting industry: Val D'Agri and Tempa Rossa Concessions, both located in the same area. Val d'Agri is operated by Eni and the co-owner Shell, and has a production capacity of 100,000 bbl/d, covering 6 per cent of Italy's demand. The oilfields provide a high-quality product, superior to the Brent standards. Approximately 87 per cent of domestic oil is extracted onshore, mostly from the Basilicata (69 per cent) and Sicilian (16 per cent) fields. On the other hand, the fields in Piemonte are rapidly depleting. A significant increase in production is expected in the coming years, following the start of the exploitation of Tempa Rossa reservoir, in Basilicata, which has an expected production capacity of 50,000 bbl/d (plus associated gas).

Italy has advanced refining facilities with a transformation capacity of 100,000 kilotonnes per year of crude oil and can guarantee a speedy transportation of the produced and imported crude over its 30,000 kilometre pipelines.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Approximately 67 per cent of Italy's energy needs are covered by traditional oil and gas supplies. Most of this is covered by imports. With regard to domestic production, at present, crude oil represents 33 per cent of national energy consumption, while domestic gas production contributes to 32 per cent of Italy's demand. With regard to trends, the oil and gas sectors are stable, whereas renewable energy sources are playing an important role covering more than the 27 per cent of the country's energy needs (although the incentives provided by the government in recent years to foster the Italian photovoltaic sector are decreasing). As regards nuclear sources, following the 2011 Japanese nuclear accidents, the Italian government put a one-year moratorium on plans to revive nuclear power. In June 2011, Italian voters passed a referendum to cancel plans for new reactors.

Among other relevant events concerning Italy's upstream sector, the state has recently signed with the Basilicata region a memorandum of understanding to double the production of crude oil, beginning from this year, at both the Val D'Agri and Tempa Rossa fields. Planned increases in production from these two areas, totalling up to 180,000–190,000 barrels per day, would represent 14 to 15 per cent of Italy's demand.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Italy is very attractive to new investors for its high prices resulting from a high-demand growth, its dependence on energy imports (77 per cent of the overall domestic energy demand) and in general, the low efficiency of existing generating capacity and high fuel costs. Hence, the government has strengthened its undertaking to attract new energy utilities, to encourage investment and to promote competitive supply by providing a clear and stable institutional framework for the energy sector. The uncertain legal framework, together with the authorisation approval process, has been the main constraint on project finance. The Italian parliament has therefore adopted a number of measures to reorganise the regulatory environment, by adopting a more comprehensive reform of the entire Italian energy sector, providing for a stricter timetable for the public authorities to deal with applications to implement oil development projects (Law No. 239 of 23 August 2004).

4 Is there an official, publicly available register for licences and licensees?

The General Directorate for Mineral Resources and Energy of the Ministry of Economic Development provides for constantly updated data on licences and licensees through its website (www.unmig.sviluppoeconomico.gov.it/unmig), its monthly Official Bulletin of the Hydrocarbons and an annual report published both in Italian and English. All those sources provide for an overview on activities carried out by oil and gas operators in Italy and contain a list of all licences and licensees. The Official Bulletin is freely accessible online.

5 Describe the general legal system in your country.

The Italian system is a civil law jurisdiction. The sources of Italian law are mainly laws, including codes (which incorporate all main provisions in a given subject matter) and regulations. Apart from the Italian Constitution and constitutional laws, the sources of primary legislation are:

- ordinary laws of the state issued by the Italian parliament;
- legislative decrees issued by the government following prior delegation by the Parliament;
- law-decrees issued in special cases by the government and that must be submitted to the Parliament for conversion into laws; and
- regional laws issued by Italian regions that have a limited scope in terms of subject matter and applicable territory.

In relation to secondary legislation, some regulations may have the force of law (eg, regulations usually adopted by administrative authorities, setting out, for instance, mandatory prices, incentives and tariffs for goods and services) and other regulations may not have the force of law (eg, regulations that are designed to give specific implementation to the principles laid down by laws).

Under Italian law, case law does not create legal rules, although it may be important in creating specific trends and interpretations of laws and regulations that the Italian legislator may consider when developing new legislation.

Regarding the enforcement of contractual and property rights, under Italian law, there are basically three types of enforcement proceedings:

- enforcement of an obligation to pay a sum of money;
- specific enforcement of an obligation to deliver movable or immovable property; and
- enforcement of an obligation to perform (or not to perform) a specific act.

The most relevant of the three ordinary types of enforcement is definitely the enforcement of an obligation to pay a sum of money, which is carried out through the distraint of specific assets of the debtor and subsequent forced liquidation and sale of the said assets.

Bankruptcy (which is regulated in the Royal Decree of 16 March 1942, No. 267 as subsequently amended and supplemented) and other insolvency proceedings against insolvent business persons and business enterprises concern the enforcement of obligations through special procedures with the involvement of an appointed receiver who manages the liquidation of the debtor's assets along with the creditors' committee and the bankruptcy judge. Such procedures are not dealt with in this chapter.

As regards domestic and foreign judgments and arbitral awards, Italy is a signatory state to, and has duly ratified into domestic legislation, both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of other States. Arbitral awards are enforced though specific proceedings before the competent Italian court of appeal.

Finally, another point of interest to a foreign investor in the oil sector is that regarding the liability of legal entities under Legislative Decree No. 231/2001, as subsequently amended and supplemented. This decree provides for an administrative and criminal liability of companies arising whenever the directors and senior managers or employees of the said companies, in the best interests or to the sole benefit of the latter, commit certain offences listed in the decree (eg, crimes against the public administration, corporate crimes, bribery and corruption and money-laundering crimes).

Indeed, sanctions that could be imposed may be particularly burdensome for the defaulting companies and may include, inter alia, financial penalties and disqualifying sanctions (such as suspension or revocation of permits and authorisations).

The liability pursuant to Decree No. 231/2001 may be excluded where the relevant company has adopted and implemented specific measures, ahead of the commission of the relevant crime (ie, adoption of an ad hoc organisation and management system (a model) and setting up of a specific supervisory board).

As regards anti-corruption measures, Law No. 190/2012, introduced heavier sanctions and new categories of corruption-related offences aiming at improving transparency in the country's public sector. It provides for the establishment of a new National Anti-Corruption Authority with investigative and sanctioning powers. The new types of offences included in the above-mentioned law, especially relevant for the private sector, are the following:

- *induzione indebita a dare o promettere utilità* (induced bribery): this covers the offence by a public officer or a person charged with a public service who, abusing of his or her powers or office, induces a private party to give or promise money in exchange of a specific advantage; in this case the private party who is unlawfully induced to give or promise such money to the public officer also commits an offence.
- *traffico di influenze illecite* (traffic of illicit influence): this new crime is provided by new article 346-bis of the criminal code which provides that a person who, by taking advantage of his or her relationship with a public officer, receives money or other kind of economic advantage in exchange for his or her unlawful mediation, commits a crime and is subject to detention; any person who gives or promises money or other advantage in exchange for unlawful mediation also commits the same crime; and
- *corruzione tra privati* (private bribery): any manager, general executive, director, auditor, or liquidator of a company who acts in breach of the duties relating to their office, to the detriment of the company, in exchange for the payment or the promise of money commits this crime; any person who gives or promises money or other advantage to these individuals also commits the same crime.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

Oil activities are considered to be part of the mineral-extracting industries whose operation and title is regulated by statute. Over the past two decades, the statutory rules in this sector have been significantly affected by European legislation.

The central part of the statutory rules dealing with upstream industry is the regulation on the standards and requirements regarding the prospecting, exploration and production of hydrocarbons in Italy. Such regulations were introduced in Italy in 1927, but have been substantially modified by Law No. 6/1957 and then constantly updated and supplemented by recent legislation. Further, since the circumstances under which offshore and onshore activities may differ from one another, specific rules were adopted in 1967 for offshore operations. These statutory rules were updated in the context of a new domestic energy plan and a more competitive market by means of Law No. 9/1991.

In 1996, Italy opened up all such activities by implementing the European Hydrocarbons Licensing Directive No. 94/22/EC, banning the monopoly of the state-owned incumbent, Eni. Due to a constitutional reform in 2001 (which has been further developed by Law No. 239/2004, also called the 'Marzano Law'), both the regulatory power and the involvement of the regions in the administrative proceedings for the granting of permits and concessions have been consistently increased in the oil-extracting sector.

Depending on the size and the location of an oil-extracting project, its development will require either a specific environmental assessment or a preliminary screening by the interested public authorities. The environmental assessment is a procedure introduced by EU regulations in 1985 for projects that have a significant impact on the environment. The environmental assessment procedures, as well as the identification of onshore areas, are mainly administered by the local authorities (regions, provinces and municipalities).

The construction, extension works and operation of an oil production unit and transmission facilities are subject to several permits and authorisations (modification of zoning plans, industrial emission authorisation, environmental, landscape and archaeological restrictions, etc), which are dealt with in special regulations.

In relation to all mineral-extracting businesses, Italy has had its own health and safety regulations since 1959. These regulations were amended after the implementation of minimum health and safety requirements for workers in the mineral-extracting industries (both on the surface and underground), as well as the particular requirements for drilling activities that are laid down in several EU directives.

Finally, the oil-extracting business is included in the list of utility sectors in which works, supply and service contracts exceeding a certain amount are subject to a specific procurement procedure (Directive 2004/17/EC, coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors). The present value thresholds, excluding VAT, are work contracts exceeding €5,278 million and service and supply contracts exceeding €422,000. According to Directive 2014/25/EC, which will repeal and replace Directive 2004/17/EC, starting from 18 April 2016, the new thresholds will be €5,186 million as regards work contracts and €414,000 as regards service and supply agreements.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

According to Law No. 6 of 1957, the Ministry of Economic Development may revoke a mining title if, inter alia, the licensee does not perform the exploitation of the field within the timeframe envisaged in the licence, does not comply with the instructions of the Ministry or does not pay the annual royalties, taxes and any other amount due in compliance with the law.

Moreover, according to Law No. 9/1991 any research, exploration or production licence may be revoked when the activities carried out by the licensee may put in danger state assets of particular environmental value or archeological sites.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The regulatory body for the oil industry is the Ministry of Economic Development (the Ministry), which also issues concessions and authorisations for the exploration and development of oilfields. Other than the electricity and gas sector, there is no independent authority.

Within the Ministry, two internal agencies and a technical commission deal with the oil-extracting industry. The DGERM issues the national energy and mineral policy guidelines and liaises with the European Union and other international organisations. Further, the DGERM sees to the implementation of the statutory rules of the oil-extracting sector.

Within the DGERM, administrative tasks are carried out by the UNMIG. The UNMIG is responsible for:

- technical oversight of the projects;
- granting the prospecting and exploration permits, and the production concessions;
- the upstream management survey;
- the royalties survey;
- planning and statistics;
- safety studies and laying down of the secondary health and safety regulation;
- the on-site health and safety inspection;
- map-making of the titles and the oil transportation system; and
- the following up of expropriation procedures.

Finally, the Ministry must require the opinion of the Technical Commission for Hydrocarbons in relation to:

- the feasibility technical programmes of the permit and concession holders;
- the health and safety survey;
- the location and size of the exploration and production area; and
- all technical issues related to the oil-extracting business.

9 What government body maintains oil production, export and import statistics?

All operators in the oil upstream industries have a statutory duty to provide Italy's National Statistical Institute with a full report on volumes and prices.

The statistics of the oil industry are mainly held within the different agencies of the Ministry.

The statistics on exploration activities, oil production and reserves are collected by UNMIG and are available on the website of the Ministry.

Information on the import, export and the position of the upstream production in respect of the overall energy business is processed and published by the DGERM.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

Whereas landowners are, as a general rule, free to develop the subsurface according to their own private and economic needs, the Italian civil law lays down an exception for mines (including oilfields) and excavations that are state property and cannot be transferred. This inalienability rule is not dependent on whether the oilfields are located on private or public land.

As a consequence, the development and operation of sub-surface and surface mineral rights can only be granted by authorisation (prospecting and exploration activities) or concession (production) issued by the Italian state (through the Ministry).

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

In Italy, oil exploration and production activities are carried out both onshore and offshore. The share of onshore production is nevertheless consistently higher than that of offshore production. The Basilicata region is the most important area for the oil extracting business; Sicily ranks second.

As of 31 December 2014, Italy counted 117 exploration permits and 201 production concessions. These activities are mainly onshore.

Exploration and production activities are prohibited in natural parks and in certain maritime zones.

In 2010, following the oil spill in the Gulf of Mexico, the Italian government implemented new measures (Legislative Decree No. 128/2010) aimed at protecting the environment and the ecosystem. Such measures prohibited offshore oil research and exploration within the boundaries of coastal and marine protected areas. The 2010 provisions banned offshore research and exploration within 12 nautical miles of the outer perimeter of the above-mentioned protected areas. However in 2012, the Italian government adopted a decree restoring opportunities relating to the exploration, prospecting and production of hydrocarbons. Indeed, by Decree No. 83/2012, it has been provided that all the restrictive measures set out in 2010 are inapplicable to those authorising procedures that were pending on the date of entry into force of Legislative Decree No. 128/2010.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

At present, oil exploration and production is regulated by state legislation with some secondary technical regulation issued by the Ministry. Further, the regions are increasingly using their recently granted regulatory powers to adopt independent regional regulation, in particular, to issue some procedural rules.

The existing regulation provides for three different phases in the oil-extracting business: prospecting, exploration and production activities.

All prospecting activities (geophysical survey) must be authorised by the Ministry.

The exploration of an area (including drilling activities) is subject to prior authorisation (exploration permit) of the Ministry, following a competitive tender procedure. The procedure in order to obtain an exploration permit is due to start upon specific application by the operator. Such an application, the cost of which is not noticeable, must be submitted along with a specific 'work programme' as well as relevant estimation costs and timeline for completion;

Since the operator has no title to the area, production activities can only be carried out on the basis of a concession, issued to the holders of an exploration permit who made a discovery capable of economic development.

All applications must be filed with the UNMIG, which will examine the respective prospecting, exploration and production programmes of the operators as a condition to the granting of the permit or concession. Therefore the timing for the granting of a permit or concession mostly depends on the relevant exploration and production programme.

If an exploration permit or a production concession is granted jointly to several titleholders, they are considered jointly liable towards the public administration and third parties for their obligations arising out of the relevant mining title. In addition, they are also bound to appoint a legal representative for all their relationships with the public administration and third parties.

That said, it must be pointed out that recently, in order to favour the exploitation of natural resources within the Italian national territory, foster the investments in hydrocarbons and achieve the supply targets as outlined in the National Energy Strategy Plan, the Italian legislator introduced a significant reform in the oil and gas regulatory framework.

By article 38 of the 'Sblocca Italia' (Unlock Italy) decree No. 133/2014 converted into Law No. 164/2014 of 11 November 2014, the government has introduced the 'single mining title' for onshore oil exploration and production, in lieu of the exploration and the concession titles. The said decree specifies that all the operators holding an exploration permit or with an application pending at the date of publication of the reform (11 November 2014), have 90 days to choose whether to turn to the new single mining title procedure by filing the relevant application with the competent Ministry of Economic Development or to stick to the current standard procedural regime (ie, exploration permit and subsequent production concession). It is worth pointing out that according to the Sblocca Italia decree, the new authorisation procedure shall be completed within 180 days from the date when the relevant operator has submitted its application; however, as of the date of this contribution (April 2015) the ministerial decrees implementing the Sblocca Italia decree and setting out in detail the steps required for the release of the single mining title have not yet been enacted.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

Although there is no specific prohibition on the Italian government participating in a licence, the government is not currently directly participating in any relevant licence or permit. However, the government controls a participation in ENI, the most important Italian oil operator. The participation in ENI is, at present, equal to approximately 30 per cent of the company's shares (the Ministry of Economic Development owns approximately 4.34 per cent of ENI's corporate capital while the Cassa Depositi e Prestiti, a state-owned joint-stock company, owns 25.76 per cent).

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

When developing oil resources, a royalty in favour of the Italian state is due from the operators.

In Italy the royalties for onshore production is, at present, at 10 per cent (following an increase of 3 per cent in 2009), while offshore production is at 7 per cent for gas and 4 per cent for oil. These are calculated on the sale value of produced quantities.

In addition, a small rental payment is to be paid to the Italian state, calculated on the basis of the number of square kilometres occupied for the prospecting, exploration and production activities.

15 What is the customary duration of oil leases, concessions or licences?

The prospecting permit has a duration of one year.

The exploration permit has a duration of six years and can be renewed for two additional three-year periods if the operator complies with the exploration programme approved by the Ministry.

The production concession has a duration of 20 years and can be extended for an additional 10-year period if the operator complies with the production programme approved by the Ministry. If, at the end of the concession, the operator has fully complied with the programme, he or she can apply each time for a five-yearly extension of the concession.

16 For offshore production, how far seaward does the regulatory regime extend?

Italy applies the criteria set in the 1982 Montego Bay Convention on the Law of the Sea. Hence, Italy has sovereign rights in a 200 nautical mile exclusive economic zone with respect to mineral extracting activities and exercises jurisdiction over environmental protection. Further, Italy has sovereign rights over the continental shelf for exploring and exploiting it. The shelf can extend at least 200 nautical miles from the shore and more under specified circumstances.

Italy has ratified several international conventions with Mediterranean states (Albania, Greece, Spain, Tunisia and the former Yugoslavia) to govern the limits of the territorial sea, the exclusive economic zone and the continental shelf.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

Differences exist between onshore and offshore regimes. The administrative procedure for the granting of an onshore mining title, regardless of its nature (exploration permit or production concession), always requires the direct involvement of the relevant regional authorities and other local entities and bodies where the area concerned by the application is located. On the contrary, in relation to the offshore regime, the administrative procedure is more centralised and the main authorities involved are the Ministry of the Environment, the Ministry of the Ministry of Defence, the Ministry of Transport and the Ministry of Agriculture. Such difference is reflected also in the environmental impact assessment sub-procedure.

Moreover, royalties due by the company to the state on the revenues derived from the production of hydrocarbons are fixed at 10 per cent for onshore production while royalties for offshore production are fixed at 4 per cent.

The legislative framework regarding exploration and production of hydrocarbons does not provide for different regimes according to the type of activity. At the present time, the same rules apply for oil as well as for gas or shale gas exploration and production.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Any operator from the EU, or outside it, may apply for a prospecting or exploration permit and can be granted production concessions. Non-EU operators may be banned from the upstream market where the statutory rules of the country of origin do not allow Italian operators to carry on oil extracting activities (reciprocity rule). In addition, Italy can refuse an operator (regardless of the country of origin) from carrying out oil extracting activities for reasons justified by public interest.

The applicant must demonstrate that they have sufficient technical and financial capacity and warrant that they will set up an organisation with adequate administrative and technical skills. To this end, the Ministry has recently implemented a regulation clarifying the meaning of 'technical and economic capability' of oil and gas operators establishing that the latter must have corporate capital of €10 million or, alternatively, corporate capital of €120,000 plus a guarantee from a controlling company or from a bank. In addition, and for the purpose of assessing their technical requisites, operators willing to obtain a mining title must submit further documentation proving their technical capabilities (eg, details of the company and of its internal bodies and staff; report on the main works carried out in the past three years either directly or, in the case of a newco, through a controlling company).

Although there is no obligation to do so, prior to filing applications for licences with the Ministry, foreign operators usually incorporate an Italian subsidiary in the form of a limited liability company or a joint-stock company (in some cases, they establish a branch).The costs relating to the incorporation of a newco are not noticeable and amount to approximately €6,000 to €8,000, whereas the costs for the registration of a branch are in the region of €4,000. The timing required for the incorporation of a newco or the registration of a branch is approximately one week.

Prospecting activities

To obtain a non-exclusive prospecting permit, the applicant must file a work programme for approval and, in the case of offshore activities, a technical survey of an engineer specifying the environmental risks of the project and the measures adopted to reduce these risks.

The work programme must identify all prospecting activities that will be carried out, the methods and equipment used, the timing and possible recovery works.

The prospecting permit is granted for a specific area.

Exploration activities

The applicant must file a technical report including information on the geomineral status of the area and the purpose of the exploration, together with the work programme, specifying all activities that will be carried out, the methods and equipment used, the timing, possible recovery works, the development costs and the financial coverage.

Following the filing of an application by an operator, the Ministry will forward a notice to the European Commission inviting applications, which shall be published in the official journal of the European communities. Other interested entities shall have a period of at least 90 days after the date of publication to submit an application.

In the event of several applications for a specific exploration permit, the Ministry shall grant the title following a competitive tendering procedure, to the programme that is most efficient and innovating and has the least impact on the environment.

A permit shall give rise to an exclusivity right to explore the relevant geographical area, which may not exceed 750km².

Production concession

If the title holders of an exploration permit discover an oil reservoir during the exploration phase, it may apply for a production concession if the production capacity of the oilfield, based on the geological data and geophysical survey, justifies the technical and economical development of the same. The maximum extension of the production concession is, as a general rule, limited to 150km².

The application must include a technical report that provides documentary evidence of the production capacity of the discovered oil wells as well as a development plan that must mention the time necessary to carry out the development plan, the investments and further exploration activities, etc.

19 What is the legal regime for joint ventures?

Permits and concessions can also be granted to more than one entity, without requiring such entities to create a corporate joint venture. The share of each co-owner is mentioned in the administrative title.

The co-owners have joint and several liability towards the Italian authorities and third parties for all duties that may derive from the upstream activities.

The co-owners must appoint an operator that will represent the co-owners in their relationship with public authorities and third parties.

When one of the members of the production concession withdraws from the project, for whatever reason, the other co-owners will subrogate the rights of the withdrawing partner.

Any assignment of the participation interest in a permit or concession requires the prior approval of the Ministry.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

If the technical and financial level of the work programme justifies a joint development, the operators may apply for a reservoir 'unitisation'.

The same rule applies in circumstances where the oilfield extends over the continental shelf of Italy, as well as the territory of another state; in this case the operator must notify the UNMIG who must take the necessary diplomatic steps to agree upon a joint operation of the cross-border oilfield.

The Italian statutory rules also govern different situations in which the operators have conflicting interests, as follows:

- where different operators intend to carry out prospecting activities at the same time, the operator that obtained the permit first is given priority;
- the holder of an exclusive licence (exploration permit or production concession) must grant access to his or her area in order to allow permit holders of a neighbouring area to carry out prospecting activities; and
- where an operator is intending to drill a well that may affect another exploration or concession area, the operator must duly inform the affected operator and invite him or her to make observations within a fixed term. If the affected operator does not respond, the addressee is deemed to have agreed to the drilling activities.

21 Is there any limit on a party's liability under a licence, contract or concession?

Under Italian law, holders of permits or concessions are fully liable for their activities and must restore all damages deriving from the operation of the said activities. In the case of co-ownership of the permit or of the concession, co-owners are jointly and severally liable towards the public administration, and third parties for the obligations arising from the operation of the activity related to the concession.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

As mentioned in question 18, companies with a corporate capital lower than €10 million, must submit adequate guarantees from a bank or from a controlling company (or from a company of the group to which the applicant belongs to) whose corporate capital is at least €10 million.

If the guarantee is given by a parent company or by a company of the same group, the guarantor shall have to prove its financial capability by means of relevant documents (eg, financial statements).

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

There are no restrictions. The Italian law does not provide for an obligation to use a minimum amount of locally sourced goods, services and capital.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

There are no restrictions. See answer to question 23.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

The transfer of an interest in a mining title from one company to another is subject to prior government authorisation issued by the Ministry of Economic Development. The authorisation is also required in the case of the transfer of a single quota of a shared mining title. In this case the relevant authorisation may only be issued by the Ministry if all other titleholders of the mining title have given their consent to the transfer. The approval is granted following due examination of the technical requirements and economic capabilities to carry out exploration or production activities. The law does not reserve pre-emptive rights for the Ministry in this respect.

The request, along with a draft of the relevant transfer deed, must be submitted to the Ministry, which usually takes up to 90 days to decide. Subsequently, the decree of transfer is published in the Official Bulletin of the Hydrocarbons.

In the case of a change of control in the titleholder of the mining title, no prior Ministry authorisation is needed, nonetheless, once the change of control has become effective, the Ministry must be duly informed of the new controlling entity and it must also be provided with all suitable guarantees issued by the new parent company in favour of the titleholder aimed at technically and financially supporting any exploration or production activity of the latter.

26 Is government consent required for a change of operator?

Yes, as mentioned in question 24, in the case of change of operator the transfer has to be notified to the Ministry for approval.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

There are not specific fees or taxes in relation to transfer or change of control to be paid other than those standard taxes levied according to the relevant corporate deal structure adopted for the transfer.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

All applications for an exploration permit or a production concession must include a specific work programme providing, inter alia, a comprehensive description of all operations expected and required to decommission any plant and facility used for the exploitation of hydrocarbons as well as for the full depletion and closure of any relevant well. Also, an estimation of the decommissioning costs must be provided for in the work programme.

According to article 31 of the Ministerial Decree of 22 March 2011, in order to proceed to any decommissioning activity, any operator is required to request a specific authorisation to the competent Territorial Office of the Ministry of the Economic Development as well as to specify in detail the work plan and the time frame needed to carry out any relevant reclamation activity.

The final release of the site by the titleholder is subject to the prior complete restoration of the same, together with its return to the landowner, anticipated by a prior releasing declaration issued by the competent public administration.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

Companies are not bound to provide a security deposit with regard to decommissioning liabilities. However, applicants with a corporate capital of between €120,000 and €10 million when applying for the granting of a research or exploration permit must submit along with the work programme a specific guarantee to cover decommissioning liabilities. Such guarantee varies depending on the size of the well and ranges from a minimum of €1 million up to a maximum of €2.5 million.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The transportation, import and export of crude oil and crude oil products are not subject to any specific authorisation (see Law No. 239/2004). However, maritime transport is governed by regulations that impose port control on the safety of the vessel, classification of companies and the use of double-hull tankers. The sea and port authorities carry out the control.

Onshore pipelines and tanker trucks must comply with the safety and environmental requirements, which are enforced by the local health and safety authorities.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

No permit, licence, authorisation or concession is required for the transportation of crude oil and crude oil products. However, these activities must be carried out in compliance with the health, safety and environmental statutory rules.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Besides the standard employers' obligations to safeguard the safety and health of workers in the working place, Italian legislation provides for specific minimum requirements for the mineral extracting business, making a distinction between the requirements applicable to all mineral extracting industries, those related to onshore or offshore activities and those related to surface and subsurface activities.

The employer must provide a health and safety document (HSD), including an illustration and identification of the operational risks, the safety measures and a long-term health and safety improvement plan. The HSD must comply with the statutory rules applicable for each single issue included in the document. In particular, the HSD must provide a detailed description of numerous situations and related safety measures, including:

- protection from fire, explosions and health-endangering atmospheres;
- escape and rescue facilities;
- communication, warning and alarm systems;
- health surveillance;
- regular review of safety and health measures;
- operation and maintenance programmes for mechanical and electrical equipment;
- maintenance of safety devices;
- use and maintenance of means of transport;
- safety exercises;
- identification of deposits;
- support and ground stability;
- ventilation;
- location of areas within which risk of fire or explosion from ignition of gas, vapour or volatile liquid exists, or is likely to exist;
- outlets and precautions for the withdrawal of workers;
- rescue organisation;
- emergency routes and exits;
- training for emergency situations; and
- utilisation, transport, deposits of explosives and protection from risk of explosion.

The HSD must be consistent with the working plan that the operator has submitted for the granting of the production licence. The HSD is subject to an authorisation by UNMIG.

Further, the employer must appoint staff responsible for the supervision of health and safety requirements, for keeping workers up to date and for providing adequate medical inspections. The employer must operate the working place according to the approved HSD and the minimum health and safety requirements laid down in the Italian statutory rules. Adequate sanitary installations and services must also be available for the workers.

Workers have a general duty to comply with health and safety regulations and must act safely in the workplace, according to the instructions of their superiors. Health and safety inspections are carried out by the DGERM together with the local offices of the UNMIG and the local health authorities.

The operator must hold daily records of all prospecting, exploration and production activities.

All drilling activities require the prior authorisation of the UNMIG, together with the local authorities. The operator must keep a drilling journal and must keep samples until the end of the drilling activities.

All planned production plants and transportation facilities must take into account health and safety requirements. The same applies to offshore platforms, the planning of which must include a forecast of the worst meteorological conditions for the next 100 years. Specific provisions are laid down for the construction of undersea pipelines with a view to safeguarding the resistance of the installations.

Refineries and service stations are subject to the common health and safety provisions for hazardous activities.

Environmental requirements differ depending on the type of installation. The following activities are subject to an overall environmental assessment:
- the prospecting, exploration and production of hydrocarbons;
- the deposit of hydrocarbons and refineries with a capacity exceeding 40,000 tonnes per year, as well as refineries; and
- transportation facilities exceeding 20km.

In any case, the above facilities, as well as service stations, must comply with the overall environmental regulations governing the protection of water, air and electromagnetic emissions and noise, and must make specific provisions regarding petrol tanks, transportation of dangerous goods by road, transportation of hard asbestos, decontamination of polluted areas, important environmental incidents, waste disposal, polychlorinated biphenyls, polychlorinated trephines, etc.

Non-compliance with the above health, safety and environmental rules is sanctioned by administrative fines or, in cases of serious infringements, imprisonment.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The quality of petrol and diesel fuels, with a view to safeguarding the air quality, is laid down in different decrees that primarily implement community directives. The EU directives establish the technical and ecological requirements for commercial use. Other regulations relate to the reduction of the sulphur content of liquid fuels used by seagoing ships, marine gas oil, fuels intended for processing prior to final combustion and fuels to be processed in the refining industry. Volatile mineral oil intended for the operation of internal combustion engines used for the propulsion of vehicles must also comply with the lead content prohibitions laid down by the statutory rules.

The quality of the oils and fuels are subject to inspections carried out by the fiscal authorities.

Operators must also comply with the statutory rules on the disposal of mineral-based lubrication or industrial oils that have become unfit for the use for which they were originally intended and, in particular, used combustion engine oils and gearbox oils, mineral lubricating oils, oils for turbines and hydraulic oils. This means that the operators may no longer discharge waste oils or process them, as this causes air pollution that exceeds the allowed emission levels. The disposal of waste oils must be adequately recorded. Only duly authorised companies are allowed to dispose of waste oils.

Besides the statutory rules governing air emissions, Italian legislation also provides specific rules on the health and safety of production, refinement, deposit, use, transport and marketing of mineral oils. Specific fire safety rules apply for services stations.

The inspections are organised by the ministries of the environment, economic development, health and finance, each according to their area of competence.

Non-compliance with the above health, safety and environmental rules is sanctioned by administrative fines or, in cases of serious infringements, imprisonment.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The selection of the workers must be based on their professional qualifications, experience and training.

There are no restrictions on workers from the EU, although they still need to apply for a residence permit.

Update and trends

Government Decree No. 2014, No. 133 (the 'Unlock Italy' decree) converted into Law No. 2014, No. 164, introduced provisions aimed at simplifying and speeding up the authorisation procedures for the exploration and production of onshore hydrocarbons. Overall, the measures envisaged, although still to be fully implemented and integrated, are important and may foster the exploration and production market, considered the potential of the national reserves of oil and gas, and additionally may also attract new investments. Specifically, it provides for the implementation of a single mining title. in lieu of the exploration and the concession titles and for an authorisation procedure which should theoretically take only six months. The Ministry of Economic Development has the task of issuing the new guidelines, within the next few months, which will set out in detail the procedure for obtaining the said single mining title.

Employees from outside the EU must first be employed by an Italian company in order to obtain a work permit. The application must be made by an employer, who must guarantee, among other things, adequate remuneration for the employee. Once the employer has obtained the work permit, the employee may apply for a residence permit, which has a maximum duration of two years. It is worth mentioning that the Italian government has limited the number of non-EU residents allowed to work in Italy. The above limitation does not apply to those directors or to those other highly specialised members of personnel who have been employed for at least 12 months prior to their temporary transfer (eg, posted workers). People with regular residence permits (students, families, etc) may require an alteration to the purpose of their permit in order to work in Italy. Nevertheless, legislation in respect to workers from outside the EU is often changing. There is no minimum amount of local labour that must be employed.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The production of oil products is accountable to a specific excise duty, the rate of which depends on the product. As a general rule, oil products used in the production process are exempt from taxation. As long as the transportation of the taxable products is carried out between fiscal warehouses, the products are exempted. Once the products are marketed and distributed an excise duty is due. Nevertheless, the tax regulation may exempt specific employment and products or apply a more favourable tariff.

The customs administration collects all the excise duties. Distribution and marketing services are subject to VAT.

In addition to the above, a special taxation regime has been introduced for oil companies that generate in Italy a yearly turnover exceeding the threshold of €3 million and declare a yearly taxable income exceeding the threshold of €300,000 by means of oil and gas marketing. Oil companies exceeding such thresholds are bound to pay an additional charge to the ordinary tax rate for companies (ie, IRES (corporate income tax) levied at 27.5 per cent). This additional charge is equal to 10.5 per cent for the fiscal year 2013 and 6.5 per cent for the following fiscal years.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Since 1994, Italy has abolished all kinds of price-setting regimes for crude oil or crude oil products. However, there is a high degree of price transparency, since the operators must notify all prices of import, export and consumption of crude oil to the Italian National Statistical Institute Programme. These figures are disclosed to the public.

Hence, it is possible to consult the monthly crude oil prices – free on board and cost, insurance and freight – and the average fuel price to customers.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Italian Competition Authority (the Authority) is an independent government body that assesses whether anti-competitive practices of undertakings in the upstream or downstream market constitute infringements of the Italian Competition Act.

The Italian Competition Act is modelled on the applicable EU regulations and the Authority commonly applies the same guidelines as the EU Commission. Briefly summarised, agreements between undertakings are prohibited if they have as their objective, or where they result in, significant prevention, restriction or distortion of competition within the relevant market, including: price fixing, market restrictions, market sharing, applying dissimilar conditions for equivalent transactions and tying.

It should be noted that cooperating joint ventures in the upstream and infrastructure markets are commonly accepted by the Authority, given that the facilities are difficult to divide or duplicate for technical reasons, as well as for reasons of profitability or environmental impact.

Holding a dominant position is not prohibited; however, abuse of such a position is. Since the exploration permits are granted by the Ministry on the basis of a tender system and traditionally separated from the downstream market, the upstream market is not greatly affected by dominant positions. On the other hand, the Authority has already sentenced several cases for abuse of a dominant position in respect of transportation or transmission facilities in the energy sector, where the behaviour of the operators were mainly assessed on the 'essential facilities' theory.

Besides the anti-competitive practices and abuse of dominant position, the Authority also surveys mergers and acquisitions within the upstream and downstream market.

A merger control procedure is only commenced if the transaction meets both of the following thresholds during the preceding financial year:

- the combined domestic aggregate turnover of all the undertakings concerned exceeds €492 million; and
- the domestic aggregate turnover of the target exceeds €49 million.

They are updated annually, to take inflation into account.

The acquisition of a share in an oil permit or concession is subject to merger control when it confers on the acquiring company the possibility of exercising a decisive influence over the activity of the joint venture.

Merger control consists of an assessment of whether the concentration creates or strengthens a dominant position in the relevant market. Since the market for hydrocarbons production is deemed to have a worldwide dimension, concentrations in Italy are likely to be cleared.

In the case of competition infringements, the Authority has the power to fine undertakings that infringe the Competition Act with a penalty amounting to a maximum of 10 per cent of their Italian turnover.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

Where the operators want to create a cooperative joint venture (restrictive agreement) for upstream or transportation activities, they can apply for an exemption. The Authority will have to decide upon the filing within 120 days (exemption or opening of an investigation).

Where the Authority deems that the concentration is not likely to affect competition in the relevant market, it will clear the merger within 30 days of the notification.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Since the oil extracting industries have been liberalised both for Italian and foreign companies, the weight of international treaties has been considerably reduced. However, international treaties may still be relevant to govern the limits of the territorial sea, the exclusive economic zone and the continental shelf and where an oil operator has difficulties in obtaining market access.

Italy is a signatory state to, and has duly ratified into domestic legislation, both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

The oil upstream market is, as a general rule, open to foreign companies and individuals.

However, where Italian entities encounter difficulties (de jure and de facto) with access to, or the exercise of, the activities of prospecting, exploring for and producing hydrocarbons in non-EU member states, Italy must inform the European Commission. The latter may authorise Italy to refuse to authorise an entity that is effectively controlled by the third country concerned or by nationals of that third country.

As for the need to have a local presence, foreign investors usually incorporate an Italian subsidiary or in some cases, a branch. For further details see question 18.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Except for the tax regulation, import and export are not subject to any specific permit or licence.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

On 12 December 2013, the Mexican Congress approved the amendment of articles 25, 27 and 28 of the Mexican Constitution (the Amendment), the most ambitious energy reform since the oil industry nationalisation in 1938. The Amendment eliminates the Constitutional restriction to use the 'contract' as a granting instrument for exploration and production (E&P) activities, while maintaining the restriction to use concessions. Also, it effectively relaxes the long-standing Petróleos Mexicanos (Pemex) monopoly by allowing the Mexican government, as well as Pemex, to enter into agreements with third parties different from or in addition to the service agreements currently in use, while title to the hydrocarbons will remain with the Mexican nation. The Amendment also provides for changes in the midstream and downstream oil and gas industry, allowing private party participation as well as private investment in the electric energy sector.

Under the new Constitutional framework the Mexican government or Pemex may enter into profit-sharing agreements, production-sharing agreements, licence agreements, or others, with oil and gas companies; Pemex no longer has the exclusive authority to carry out E&P activities in Mexico; and Pemex may strategically partner with private, public, or state-owned oil and gas companies to develop specific projects.

Other key terms of the Amendment include the following:

- the ability for Pemex and third parties to perform E&P activities and to record their expected economic benefits for accounting and financial purposes;
- changes in the midstream and downstream oil and gas industry to allow private investment and participation, as well as private investment in the electric energy sector;
- change in the legal nature of government companies – Pemex and Federal Electricity Commission (CFE) will be transformed into 'Productive State Companies' that follow best international corporate practices, instead of decentralised government entities;
- the strengthening of the energy sector-regulating authorities (SENER, CNH, CRE) and the creation of the Natural Gas National Control Centre, the Energy Control National Centre and the Environmental and Industrial Safety National Agency for the Hydrocarbons Sector; and
- the creation of the Mexican Petroleum Fund as a government trust (with the Central Mexican Bank acting as Trustee) to collect and administer the income derived from the contracts with oil and gas companies and direct awards to Pemex.

Pemex

Historically, the key participant in the oil industry has been Pemex, Mexico's state-owned oil company. However, it is still unclear how the effects of the Amendment will impact Pemex's role in Mexico's oil and gas industry going forward. As a result of the Amendment, Pemex will no longer have the exclusive authority to carry out E&P activities in Mexico and will be able to strategically partner with private, public, or state-owned oil and gas companies to develop specific projects. In addition, Pemex will undergo a deep corporate reorganisation process and be transformed into a 'Productive State Company' that follows the best international corporate practices, instead of a decentralised government entity.

Reserves

Official approved hydrocarbon reserves as of 1 January 2014 are 13,438.5 million barrels of oil equivalent (Mboe) for proven reserves, 11,377.2 Mboe for probable reserves and 17,342.8 Mboe for possible reserves. It is worth noting that the current reserves certification process, modified as a result of the 2008 Energy Reform, involves a three-tier mechanism starting with the reserves evaluation from Pemex, followed by the certification from a third-party independent expert and ending with the approval by the National Hydrocarbons Commission (CNH).

Proven reserves in 2014 were slightly lower than those in 2013. Once again, as in 2011, a level of 100 per cent reserve restitution rate was achieved (exactly 105.2 per cent, 3.26 per cent higher than in 2011). Pemex estimates proven reserves in compliance with the definition of proven reserves established by the Securities and Exchange Commission. The evaluation of probable and possible reserves is consistent with the definitions determined by the Society of Petroleum Engineers, the World Petroleum Congresses and the American Association of Petroleum Geologists.

Production

According to Pemex's official reports, Mexico's total hydrocarbon production as of 31 December 2013 is 3,656 Mboed, approximately the same as in 2012. Of this total amount, crude oil production accounted for 2,522 million barrels per day (bbl/d), condensate production equalled 41 million bbl/d and natural gas production the remaining 6,370 million cubic feet per day. According to Pemex's official reports, production in 2013 shows a decrease of 26 tbpd as compared to 2012, primarily due to a 1.4 per cent decrease in production of heavy crude oil due to a natural decline in production of fields in the Cantarell Business Unit, and an increase in the fractional water flow of its wells; and a 5.7 per cent decrease in production of extra-light crude oil, primarily due to a natural decline in production of fields of the Delta del Grijalva and Crudo Ligero Marino projects. This decrease was partially offset by a 1.6 per cent increase in light crude oil production at the Kuil, Onel and Chuhuk fields of the Abkatún-Pol Chuc Business Unit and the Tsimín field of the Litoral de Tabasco Business Unit in the Southwestern Marine region, at the Kambesah field of the Cantarell Business Unit in the Northeastern Marine region and at the Gasífero field of the Veracruz Business Unit in the Northern region.

In January 2013, crude oil production averaged 2,561.9 million bbl/d, 1.8 per cent higher than January 2012, due in part to the 2.3 per cent increase in light crude oil production, the 2.4 per cent increase in superlight crude oil production and the 1.3 per cent increase in heavy crude oil production. The decline in production at Cantarell, once one of the largest oilfields in the world, has been partially offset by the increase in production in other areas such as Ku-Maloob-Zaap. However, industry production forecasts indicate that Mexico will become a net oil importer by 2020, with net imports of over 1 million bbl/d by 2035. As of March 2015, crude oil production averaged 2,320.3 million bbl/d.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Oil covers directly or indirectly around 58 per cent of total energy needs in Mexico followed by natural gas with 30 per cent. The most significant fuel demands come from the transportation sector, followed by the electricity sector and with lesser demand coming from the industrial and oil production sectors. Projections for the next 10 years anticipate the electricity and industrial sectors decreasing their demand for fuel, whereas the transportation and oil sectors will likely see increases in demand. Gasoline represents the most significant demand for oil products, followed by diesel and LP gas. Out of the total final energy consumption, gasoline is the main product consumed, representing approximately 30 per cent of the total energy consumption.

Since internal supply has been unable to meet the growing national demand in recent years, there has been an increase in imports of oil-related products, making Mexico a net importer. Mexico imported, according to 2012 figures, approximately 657.4 Mboe of oil-related products, of which gasoline represented the most imported fuel; at January 2013, Mexico averaged 274.2 tbd of daily gasoline imports. Strategic projects are planned that will increase efficiency in the national refinery system's production of gasoline products.

In 2013, the volume of crude oil exports decreased by 5.3 per cent, from 1,256 tbpd in 2012 to 1,189 tbpd in 2013, mainly due to a 3.3 per cent decrease in the average price of the Mexican crude oil basket from US$101.86 per barrel in 2012, to US$98.54 per barrel in 2013, of which approximately 88 per cent of the total crude oil exports were delivered to the United States, while the remaining exports were distributed among Europe, the rest of America and the Far East. As of January 2013 the average total amount of crude oil exports is 1,289.5 tbd, and exports of oil equivalent products average 201.9 tbd. In 2012, the US imported 0.957 million bbl/d of crude oil from Mexico, reinforcing the decreasing tendency seen in the last years (1,139 bbl/d in 2010 and 1,095 bbl/d in 2011).

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The Energy Sector Programme for 2008–2018, part of the National Development Plan issued by the Mexican president through the Secretary of Energy, contains the long-term energy strategy for guaranteeing a sufficient supply to maintain Mexico's economic growth. This energy policy is aware that Mexico faces the challenge of obtaining hydrocarbon resources from increasingly complex fields; the programme promotes efforts to increase production capacity and investment, increase reserves and restitution rates of proven reserves, adopt risk management and accountability practices that investment entails and using adequate technology for production in new fields. The programme's objective of guaranteeing energy security for the coming years also implies optimising the extraction of oil resources in a sustainable way, at competitive prices and with international standards of quality. The programme also includes identifying and exploiting opportunities in renewable energy resources and energy-efficient technologies.

4 Is there an official, publicly available register for licences and licensees?

As a result of the 2008 Energy Reform, the Energy Ministry and the National Hydrocarbons Commission, together with Pemex, developed the National Hydrocarbons Information System (SNIH) for purposes of keeping the most updated information regarding the hydrocarbons industry and complying with the disclosure obligations set forth in the new legal regime.

The SNIH currently hosts information regarding the oil infrastructure in Mexico, the reserves in place classified by oilfield, the decisions by the CNH with respect to exploration and production of hydrocarbons, as well as the geological information regarding oil operations in Mexico. The SNIH can be accessed at http://egob2.energia.gob.mx/SNIH/Reportes/.

5 Describe the general legal system in your country.

Mexico has a civil law legal system that derives from the French Civil Code (known as the Napoleonic code), where the application of the law is based on a codification of the laws and legal principles. These codes reflect the general divisions in law that have developed over the years. Civil law regulates the relations between individuals, their marital status, the organisation of the family, legal capacity, the status of personal and real property and civil contracts.

Litigation in Mexico is expensive, there are no punitive damage awards, parties must pay for their own attorney's fees and costs and the litigation process can be very lengthy. Accordingly, litigation in Mexico is not practical unless absolutely unavoidable to accomplish a vital business objective (although there are no punitive damage awards in Mexico, awards for 'moral damages' are possible under certain circumstances set forth in the Civil Code).

For these reasons, most commercial litigation in Mexico is settled out of court. Judgments are often difficult to enforce against even a solvent defendant, given that they can be contested in a separate *amparo* challenge, which can drag on for several years. When doing business in Mexico, companies should avoid litigation by incorporating mediation and arbitration provisions into their contracts, adequately securing obligations when possible and carefully selecting the parties with whom they are dealing.

Mexico is a signatory to the international anti-corruption conventions of the United Nations, the Organisation of American States and the OECD. The rules deriving from these conventions have been reflected throughout Mexico's numerous domestic legislation. Historically, anti-bribery rules have focused on the responsibility of the public officers, through the enforcement of the Federal Law on Administrative Accountability of Public Officials Most recently, in June of 2012, the Federal Anti-corruption Law on Public Contracting was passed to provide with sanction mechanisms applicable to public officials, private companies and individuals that attempt to illegally influence government contracting procedures.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

On 12 December 2013, the Permanent Commission of the Mexican Congress approved amendments to articles 25, 27 and 28 of the Political Constitution of the United Mexican States (the Mexican Constitution), which were subsequently approved by a majority of Mexico's state legislatures and signed into law by the President of Mexico, Enrique Peña Nieto. On 20 December 2013, these amendments were published as the Decree that Amends and Supplements Various Provisions of the Mexican Constitution Relating to Energy Matters (which we refer to as the Energy Reform Decree) in the Official Gazette of the Federation, and took effect on 21 December 2013. The Energy Reform Decree includes transitional articles that set forth the general framework for the secondary legislation or implementing laws, which have not been enacted yet.

As a result of the Energy Reform Decree, the following are some of the key laws and regulations that will make up the principal legal framework regulating oil activities:

- the Political Constitution of the United Mexican States;
- the Hydrocarbons Law and its Regulations;
- the Hydrocarbons Revenues Law and its Regulations;
- the Pemex Law;
- the Comisión Nacional de Hidrocarburos Law; and
- regulations issued by the National Agency of Industrial Safety and Environmental Protection for the Hydrocarbon Sector.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

In August of 2014, the secondary laws to implement the Amendment were passed, completing the new legal framework that includes the Hydrocarbons Law, the Hydrocarbons Revenues Law, new laws for both Pemex and CFE, an Electric Industry Law and a Regulating Agencies Law, among others. In addition, the Ministry of Energy issued the secondary legislation's regulatory laws on 31 October 2013 and the CNH published the administrative rules to carry out exploration and production contract bids on 28 November 2014. The new legal framework for exploration and extraction activities includes the rules for the following contractual arrangements:

- licences, pursuant to which a licence holder would be entitled to the hydrocarbons once these are extracted from the subsoil;
- production-sharing contracts, pursuant to which a contractor would be entitled to receive a percentage of production;
- profit-sharing contracts, pursuant to which a contractor would be entitled to receive a percentage of the profit from the sale of the extracted hydrocarbons; and
- service contracts, pursuant to which a contractor would receive cash payments for services performed.

The new legal framework is subject to the provisions of the Mexican Constitution regarding expropriation. Article 27 of the Constitution states the general principle that any expropriation must follow, which can only happen for a public policy reason and through an indemnisation. Further, the Expropriation Law details what constitutes public policy and the specific process under which an expropriation may take place. In addition, the Hydrocarbons Law contains detailed terms and conditions for the use, enjoyment, or encumbrance of the land, property or rights needed to perform exploration and productions activities, as well as the general rules regarding negotiations between the owners or title holders of such land, property or rights, including real and communal rights, and the assignees or contractors.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The Secretary of Energy, on behalf of the executive power, conducts the national energy policy. Its objective is to guarantee the competitive, sufficient, high-quality, economically viable and environmentally sustainable supply of fuel needed for the development of the nation. Pemex oversees its own oil activities, which are subject to review by different government agencies. For everything related to liquefied petroleum gas, the Energy Regulatory Commission (CRE) is the regulating authority.

As a result of the 2008 energy reform, the National Hydrocarbons Commission was created as an independent agency, part of the Ministry of Energy, in charge of regulating and supervising the exploration and production of hydrocarbons, as well as all hydrocarbon storage, transportation and processing activities.

As a result of the Energy Reform Decree, the Ministry of Energy, the CNH and the Energy Regulatory Commission have been granted additional technical and administrative authority over the energy sector generally, as described below:

- the Ministry of Energy, with the technical assistance of the CNH, now has the authority to grant assignments pursuant to round zero, select the areas that will be subject to public bidding, establish the technical guidelines for the bidding process, as well as for the contracts themselves and issue permits for oil refining and natural gas processing;
- the CNH is responsible for conducting the public bidding process and executing the corresponding contracts, as well as supervising oil and gas production activities; and
- the Energy Regulatory Commission regulates and grants permits for the storage, transportation and distribution through pipelines of oil, gas, petroleum products and petrochemicals, regulates third-party access to transportation pipelines, as well as to the storage of hydrocarbons and their derivatives and regulates the first-hand sale of the aforementioned products.

The CNH and the CRE have been vested with their own legal status and technical and administrative autonomy. In addition, the Ministry of Finance and Public Credit, as well as other government entities, has been entrusted with establishing the economic terms for contracts assigned pursuant to the public bidding process.

In addition, the National Agency of Industrial Safety and Environmental Protection for the Hydrocarbon Sector has been created to regulate and supervise activities and facilities related to the hydrocarbons industry with respect to industrial safety and environmental protection. This new entity will operate as an administrative body of the Ministry of the Environment and Natural Resources and will, among other things, supervise the decommissioning and abandonment of facilities. In relation to this, companies participating in the hydrocarbons sector will be subject to regulations intended to reduce greenhouse gas emissions and help ensure that energy and natural resources are used efficiently.

9 What government body maintains oil production, export and import statistics?

Energy statistics are published by the Energy Information System (http://sie.energia.gob.mx/), an agency of the Ministry of Energy that provides statistics on production, consumption, import and export of all energy products.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

Mexico holds title over all oil reservoirs. There is no involvement of private lands and no distinction between surface rights and subsurface mineral rights, since any territory where there is an oil reservoir is deemed federal. The executive power establishes which territories are federal oil reserves through a presidential decree. Only the executive power may authorise the use of federal lands for oil exploration and production.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Oil exploration and development activities include onshore and offshore drilling. The Secretary of Energy assigns territories to Pemex on behalf of the government with the authorisation to explore for subsurface hydrocarbons and develop them. Therefore, it is up to the government to prohibit exploratory and development works in certain areas of federal territory, for environmental, military or other purposes, such as environmental reserves or military zones.

Transitional article six of the Energy Reform Decree, which outlines the round zero process, requires Pemex to submit a proposal to the Ministry of Energy requesting the assignment of the right to explore and develop areas in which Pemex currently operates based on its technical, financial and operational capabilities. Accordingly, on 21 March 2014, Pemex submitted to the Ministry of Energy a request to retain rights to allow it to maintain its current production and provide sufficient exploration opportunities to increase its production in the future. Together, the areas that Pemex requested contain almost all of Mexico's estimated proved reserves of crude oil and natural gas as of 1 January 2013.

The Ministry of Energy had, in accordance with the transitional articles of the Energy Reform Decree, until 17 September 2014 to respond to Pemex's requests. Any areas that Pemex did not request or are not assigned to Pemex will be subject to a competitive bidding process.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

Until the first production sharing agreements are awarded in July 2015, all oil exploration and production activities will continue to be conducted by Pemex. Pemex operates through a corporate entity and seven operating subsidiaries. Pemex Exploración y Producción manages the exploration and development of oil, including transportation and storage.

The Energy Reform Decree provides a new legal framework for exploration and extraction activities that will permit following granting instruments:

- licences, pursuant to which a licence holder would be entitled to the hydrocarbons once these are extracted from the subsoil;
- production-sharing contracts, pursuant to which a contractor would be entitled to receive a percentage of production;
- profit-sharing contracts, pursuant to which a contractor would be entitled to receive a percentage of the profit from the sale of the extracted hydrocarbons; and
- service contracts, pursuant to which a contractor would receive cash payments for services performed.

The specific procedures, timing and cost to apply for such rights are included in the secondary legislation's regulatory laws published on 31 October 2013 by the Ministry of Energy and in the administrative rules to carry out exploration and production contract bids published on 28

November 2014 by the CNH. Also, the bid guidelines for the specific tenders called by the CNH establish the details regarding the procedure to bid for and award exploration and production agreements.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The Mexican government will carry out exploration and extraction of hydrocarbons in Mexico through assignments to productive state-owned companies (as described above) or through agreements (licences, profit sharing, production sharing or service agreements) with these productive state-owned companies or with private sector companies. The Mexican government will have the flexibility to combine elements of these contractual frameworks in order to maximise the income attributable to the Mexican nation and thereby help ensure its long-term development. In addition, the Energy Reform Decree specifies that the process by which the Mexican government grants any such contract will be governed by rules that ensure its transparency, and information about payments made or taxes paid under any such contract will be made publicly available.

The Hydrocarbons Law provides that a 30 per cent participation of the Mexican state, through Pemex or any other productive State company, or any specialised financial vehicle of the Mexican State may be included in the following cases:

- when the contract area of the bidding process coexists at a different depth with an assignment area;
- when opportunities exist to promote the transfer of knowledge and technology for the development of the skills of Pemex or other productive state company; or
- in the case of projects that are chosen to be pursued through a specialised financial vehicle of the Mexican state.

Also, a mandatory 20 per cent participation of Pemex or other productive state company in the exploration and extraction contracts of the contract areas must be included where the possibility of finding trans-boundary reservoirs exists.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Pemex is obligated to pay the Mexican government the taxes and contributions listed in the Federal Rights Law.

The Hydrocarbons Revenues Law states that the amount of royalties for exploration and production contracts shall be determined by each type of hydrocarbon, by applying the corresponding rate, to the petroleum contractual value, the natural gas contractual value and the condensates contractual value, in accordance with the following:

The following rates shall be applied to the contractual petroleum value:

- if the petroleum contractual price is less than US$48 per barrel, a rate of 7.5%, and
- if the petroleum contractual price is greater than US$48 per barrel:
  Rate = ((0.125 × petroleum contractual price) + 1.5)%

The following rates shall be applied to the natural gas contractual value:

- related to associated natural gas:
  Rate = (natural gas contractual price ÷ 100)%
- related to non-associated natural gas:
  - if the natural gas contractual price is less than or equal to US$5 per millions of btu, a rate of 0%;
  - if the natural gas contractual price is greater than US$5 and less than US$5.50 per millions of btu:
    Rate = (((natural gas contractual price – 5) × 60.5) ÷ natural gas contractual price) %
  - if the natural gas contractual price is greater than or equal to US$5.50 per millions of btu:
    Rate = (natural gas contractual price ÷ 100)%

The following rates shall be applied to the condensates contractual value:

- if the condensates contractual price is less than US$60 per barrel, a rate of 5%, and
- If the condensates contractual price is greater than or equal to US$60 per barrel:
  Rate = [(0.125 × petroleum contractual price) - 2.5]%

Any variation in the producer price index or substitute index of the United States shall be considered for purposes of determining the rates to calculate royalties.

15 What is the customary duration of oil leases, concessions or licences?

As a result of the Energy Reform Decree, the Mexican government will carry out exploration and extraction of hydrocarbons in Mexico through assignments to productive state-owned companies or through agreements (licences, profit sharing, production sharing or service agreements) with these productive state-owned companies or with private sector companies. The Mexican government will have the flexibility to combine elements of these contractual frameworks in order to maximise the income attributable to the Mexican nation and thereby help ensure its long-term development.

Until the Energy Reform Decree, the assignments of territories by the Secretary of Energy to Pemex for oil exploration and development have a general term of 30 years, which may be extended upon Pemex's request. The duration, price, existence and amount of performance guarantees, as well as other general terms of service contracts and agreements entered into by Pemex or its subsidiaries with any third party, depend on the scope and nature of the work to be performed and are regulated by the Pemex Law, its regulations and the Regulations (as defined in question 7).

The first model production sharing contracts for the exploration and extraction areas tendered in round one consider a 30-year term with the possibility of two five-year extensions.

16 For offshore production, how far seaward does the regulatory regime extend?

Mexico's hydrocarbon regulatory regime extends to the continental shelf pursuant to article 27 of the Constitution and applicable provisions of international law. There is also an exclusive economic zone covering 200 nautical miles from the coastline, as established by both article 27 of the Constitution and the United Nations Convention on the Law of the Seas, of which Mexico is a party.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

Except for the Federal Rights Law, which establishes the taxes to be paid by Pemex to the Mexican government, the laws applicable to the energy sector in Mexico do not distinguish between activities carried out onshore and offshore.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

As a result of the Energy Reform Decree, the Mexican government will carry out exploration and extraction of hydrocarbons in Mexico through assignments to productive state-owned companies or through agreements (licences, profit sharing, production sharing or service agreements) with these productive state-owned companies or with private sector companies.

Pursuant to the newly enacted Hydrocarbons Law, exploration and production contracts may only be entered into with Mexican entities. Foreign entities may participate in the tender process; however, once a contract is awarded, its execution must be done through a Mexican subsidiary.

The cost and timing to form a Mexican subsidiary depends on several factors, however, standard Mexican companies can be formed in 5–10 days once all of the necessary documents and information has been obtained, and the cost of formation should be in the range of US$2,000–3,000.

19 What is the legal regime for joint ventures?

There is no specific statute or law that governs or mandates the formation of joint ventures. Joint ventures are subject to the applicable provisions of the Business Corporations Law, the Hydrocarbons Revenues Law, the tax laws and the terms that the parties involved negotiate. It used to be that joint ventures used in the oil industry in Mexico were limited to providing services to Pemex, but now, the new legal regime provides the possibility of using joint ventures for exploration and productions contracts similar to other jurisdictions where joint ventures, through joint operating agreements, can engage in production-sharing agreements.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Unitisation does not apply to Mexican domestic reservoirs since they are property of the nation and developed solely by Pemex. An area or block to be used for drilling and production purposes must be delimited by Pemex to the number of wells and amount of production required for effective development of a reservoir. However, on 20 February 2012, the governments of Mexico and the United States signed the US–Mexico Transboundary Hydrocarbon Agreement, which provides the general legal framework for both countries to jointly develop hydrocarbon structures and reservoirs that extend across their maritime boundaries. Unitisation agreements will be regulated by the enacting legislation following the Energy Reform Decree and it is possible that under the new constitutional framework in Mexico, the 2012 Transboundary Agreement may be amended to provide that any joint development of cross-border reservoirs shall be conducted by the parties, directly or through private companies, through a unitisation agreement in accordance with the rules set forth therein.

21 Is there any limit on a party's liability under a licence, contract or concession?

The model contract for the first production-sharing contract tenders provide that each of the members of a consortium shall be jointly and severally liable for the performance of any and all of the contractor's obligations under the contract.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Parental guarantees and performance guarantees are common practice in Mexico since Pemex has been obligated by law to request them from its contractors, both as security for its obligations to compensate Pemex for contractual penalties, damages and indemnity obligations under the service agreements and to guarantee their obligations under such service agreements.

The model contract for the first production-sharing contract tenders provides that the contractor must deliver to the CNH an unconditional and irrevocable letter of credit issued by an authorised Mexican banking institution or issued by a foreign bank and confirmed by an authorised Mexican banking institution, as the initial exploration performance guarantee that must cover the minimum work programme and the minimum work programme increase. Such guarantee shall remain in effect until 60 days following the end of the exploration period.

Also, each member of the consortium must deliver to CNH a corporate guarantee signed by its ultimate parent company; in the understanding that if the guarantor of the company is not an ultimate parent entity, the guarantor shall submit to the CNH its duly audited consolidated financial statements for the last three years, demonstrating a minimum shareholders' equity of US$6 billion.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

Contractors under the first model production-sharing contracts must comply with the following:

During the exploration period

Contactors are to comply with a minimum percentage of national content of 13 per cent of the value of the items indicated in the methodology which have been purchased or contracted for petroleum activities during the exploration period, which shall be verified annually by the Ministry of Economy in accordance with such methodology and the applicable laws.

Contractors are to include in the proposed exploration plan a compliance programme for the above-referenced minimum percentage of national content, as well as a programme for transfer of technology, including the applicable periods and stages for both programs, in order for CNH in consultation with the Ministry of Economy to grant or deny its approval pursuant to articles 4.1 and 4.4, it being understood that once approved it will form an integral part of this contract and shall be considered an obligation of the contractor. The contractor's obligations regarding national content will commence upon approval of the exploration plan.

During the development period

Contactors are to comply each year with a minimum percentage of national content of the value of all the items indicated in the methodology which have been purchased or contracted for petroleum activities during the development period, which shall constitute at least 25 per cent in the first year of the development period and shall increase annually at a constant rate until the year 2025 when it shall constitute at least 35 per cent, which shall be verified annually by the Ministry of Economy in accordance with such methodology and the applicable laws.

Contractors are to include in the proposed development plan a compliance programme for the above-referenced minimum percentage of national content, and a technology transfer programme, including the applicable periods and stages, in order for CNH in consultation with the Ministry of Economy to grant or deny its approval pursuant to article 6.2, it being understood that once approved it will be part of this contract and shall be considered an obligation of the contractor. The obligations relating to national content will commence upon approval of the exploration plan.

Beginning in the year 2025, the items indicated in the above-referenced methodology shall constitute at least 35 per cent of the value of all the of the above-mentioned items which have been purchased or contracted for the exploration and extraction activities, without prejudice to the fact that this minimum average percentage of national content will be revised pursuant to transitory article 24 of the Hydrocarbons Law.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

The service agreements that Pemex uses do contain customary change of control provisions intended to preserve the technical expertise of the company acting as operator on behalf of the contractor. Change of control must be approved by Pemex and usually may be accomplished within a 30- to 45-day period.

Participating companies must obtain the prior written approval of CNH in order to sell, assign, transfer, convey or otherwise dispose of all or any part of their rights (including all or any part of their participating interests) or obligations under exploration and production contracts.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

The model contract for the first tenders provides that participating companies may change the operator, and the operator may resign from its role as operator, subject to the prior written consent of CNH; provided that any new operator shall comply at a minimum with the pre-qualification criteria established for the operator during the bid process of the contract, and provided that the change of operator occurs during the first five years following the effective date.

26 Is government consent required for a change of operator?

No specific fees or taxes are levied for transfers or changes of control.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

No specific fees or taxes are levied for transfers or changes of control.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

Under the standard clause in the current exploration and production contracts entered into by Pemex and private sector companies, the contractor has the obligation to carry out all operations related to the abandonment in the contract area at its own cost. This obligation of the contractor's to carry out all abandonment activities survives the termination of the contract for 10 years. In the performance of abandonment activities, contractors must comply with all the applicable laws, which include, among others, the Environmental Law, its 11 Regulations, the Law to Prevent and Manage Hazardous Waste and its Regulations and the applicable Mexican Official Norms (NOMs) issued by the environmental authority. The NOMs applicable to abandonment activities are NOM-115-SEMARNAT-2003, NOM-149-SEMARNAT-2006 and NOM 138-SEMARNAT-2003.

The model production-sharing contracts establish that the contractor shall be obligated to conduct all activities related to abandonment of the contract area. The development plan and each work programme and budget submitted for approval by CNH shall contain a section on abandonment, which shall include all activities necessary for the permanent plugging of wells, clean-up, restoring the area to its natural state, uninstalling machinery and equipment and returning the contract area in an orderly fashion, free from debris and waste, all in accordance with industry best practices and the management system and the applicable laws. Also, if the contractor declares a commercial discovery, the contractor shall establish an investment trust jointly controlled by CNH and the contractor at a Mexican banking institution authorised by the CNH, for the purpose of creating a reserve to fund abandonment activities in the contract area.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

The contractor shall deposit in the abandonment trust one quarter of the annual contribution at the end of each quarter. The annual contribution for abandonment activities in the contract area shall be determined based on the following formula:

$$\text{Maximum } [AAt = (PAEt/RRR) \times CAE - IAt]$$

where:

AAt = annual contribution

PAEt = estimated production in the field for the year of calculation

RRR = recoverable reserves remaining from the year of calculation, as determined by the contractor with the approval by CNH, remaining at the beginning of the year of calculation, until the earlier to occur between: the natural termination of this contract or the year in which it is estimated that abandonment activities will be conducted in the field

CAE = remaining amount of the costs of abandonment at the start of the year of calculation, estimated pursuant to the development plan, as it may be modified. such remaining amount shall be calculated as the difference between the aggregate balance in the abandonment trust at the start of the year of calculation (AAAt1) and the global amount of such costs of abandonment to be estimated on the basis of the total costs of abandonment for the field according to technical studies conducted by the contractor and approved by CNH

IAt = is the interest generated in the trust in the calculation year, following the formula provided below:
$IAt = rt \times AAAt1$
where:

rt = is the interest rate applicable to the balance in the abandonment trust

AAAt = is the aggregate annual contribution is the aggregate balance in the abandonment trust at the end of the year of calculation, defined as follows:
$AAAt = AAAt1 + AAt + IAt$

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

As a result of the Energy Reform Decree, transportation of crude oil and products is now governed by the Hydrocarbons Law and is subject to permits issued by the Ministry of Energy and the Energy Regulatory Commission.

The parties interested in obtaining the permits shall file an application before the Ministry of Energy or the Energy Regulatory Commission, as applicable, which will contain:

- the name and address of the applicant;
- the activity it wishes to pursue;
- the technical specifications of the project;
- the document that states the applicant's commitment to have the guarantees and insurance required by the competent authority, as applicable; and
- other information established in the corresponding regulation.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

The permits may be granted to Pemex, other productive state companies and private sector companies, in accordance with the regulations of the Hydrocarbons Law. In order to grant a permit, the interested parties shall be subject to demonstrating the following:

- a design of the facilities or equipment in accordance with the applicable laws and best practices; and
- suitable conditions to ensure the proper continuity of the activity specified in the permit.

For the evaluation and as applicable, the granting of a permit for pipeline transportation or storage of hydrocarbons, petroleum products, or petrochemicals, the Energy Regulatory Commission may analyse its impact on the efficient development of such activities, and the common infrastructure needs in the corresponding region, having the authority to request the modification of the nature and extent of the facilities, through conditions such as open access, interconnection with other transportation systems granted with permits and rate regulation.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

All oil-related activities and operations must comply with the environmental requirements of the Environmental Protection Law and the corresponding regulatory laws, most notably, concerning environmental impact, hazardous wastes and prevention and control of air pollution, which require an environmental impact study and authorisation for all oil-related activities. There are penalties, both monetary and criminal, in cases of non-compliance of environmental statutes and in particular for polluting the environment. All environmental issues are regulated by the Secretary of the Environment and Natural Resources. The Secretary of the Environment and Natural Resources also issues specific guidelines for complying with permissible atmospheric discharges, hazardous wastes and fuel quality.

The guidelines for safety and sanitary purposes that are applicable to oil-related activities may be issued by the Secretary of Communications and Transportation, the Secretary of Health and the Secretary of Labour, and by Pemex itself for technical purposes and the safety of its personnel, all pursuant to the Federal Metrology and Standardisation Law. These

Update and trends

Following a year-long legislation process that began on 12 December 2013, Mexico's National Hydrocarbons Commission (CNH) published in December of 2014 the bid guidelines (the Guidelines) through which the first 14 round one shallow-water oil exploration and production blocks will be publicly tendered in July of 2015. This initial tender follows an extensive and fast-track legislation process that began with the amendment of the Mexican Constitution in December 2013; the passing of the secondary legislation by the Mexican Congress on 11 August 2014; the issuance by the Ministry of Energy of the secondary legislation's regulatory laws on 31 October 2013; and the publication by the CNH of the administrative rules to carry out exploration and production contract bids on 28 November 2014.

The Guidelines represent the final step in completing the general legal framework resulting from the most ambitious energy reform process in Mexico in the past 76 years. The Guidelines allow for any person to provide the CNH with comments and suggestions, and interested companies may proceed with the registration and data room access payment to begin formally participating in the different stages of the bid process, which include a data room access period, clarification meetings with the CNH, a prequalification period, the proposal submission period, and the contract award and execution.

The Guidelines set forth the rules through which the CNH will carry out one public bid to award 14 production-sharing agreements to those companies that satisfy the required technical and financial capabilities. Some of the key terms included in the Guidelines are the following:

- companies may acquire the Guidelines, prequalify and submit proposals through their foreign entities; only those companies that are awarded a contract shall have to incorporate a Mexican entity for the purposes of executing the production-sharing contract with the CNH;
- companies may participate individually or as part of a non-incorporated consortium; however, companies will not be able to submit or be part of more than one proposal per contract area and will not be able to submit proposals for more than five blocks in this particular bid round;
- the prequalification criteria in the Guidelines are final (not subject to further modifications) and include proving operating experience in similar exploration and production projects in the last four years (directly or through affiliates), showing assets equal to US$10 billion or a shareholder's equity of up to US$1 billion and experience operating under international occupational safety and health standards, among others;
- major oil companies cannot partner among themselves in conventional areas; only for deep-water and unconventional oil and gas projects; and
- a combination of state consideration and the amount of investment will be the deciding criteria to award contracts; the fiscal terms of the model contract include an exploratory phase fee, royalties and an operational fee in favour of the state; the contractor will receive the remainder of the operating profit and may recover costs subject to the cap mechanism included in each agreement.

The publication of the Guidelines represents the first stage of a multiple-phase approach by the Mexican government to implement the Energy Reform process, which includes the migration of 22 outstanding integrated service agreements into production-sharing contracts, farming out 10 contract areas directly awarded to Pemex, and the tender of 169 round one blocks. This is only the first step in the opening of Mexico's oil and gas industry to private investment.

guidelines complement the legal framework by establishing technical and safety standards regarding all aspects of oil activities including the design, construction, operation and maintenance of facilities.

In addition, in May 2005, Pemex began the implementation of the Safety, Health and Environmental Protection Programme (the SSPA), through which several actions were identified and put into practice to limit the quantity and severity of personal and industrial incidents in Pemex. The implementation of the SSPA is expected to last three years and several regulations, including NOMs, Mexican standards and reference standards, issued by Pemex and internal and international regulations (API, ASTM, ASME, ANSI, NFPA, ISO, GPA, NACE, ISA, NEMA and TEMA) have been included in all processes. Pemex plans to achieve zero incidents, injuries, emissions of pollutants or illnesses for all of its work centres.

As a result of the Energy Reform Decree, the National Agency of Industrial Safety and Environmental Protection for the Hydrocarbon Sector will be created to regulate and supervise activities and facilities related to the hydrocarbons industry with respect to industrial safety and environmental protection. This new entity will operate as an administrative body of the Ministry of the Environment and Natural Resources and will, among other things, supervise the decommissioning and abandonment of facilities. In relation to this, companies participating in the hydrocarbons sector will be subject to regulations intended to reduce greenhouse gas emissions and help ensure that energy and natural resources are used efficiently.

The present health, safety and environment requirements may radically change as a result of the Energy Reform Decree.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

According to Mexican law, only Pemex may produce, transport, distribute, store and make the first-hand sale of the products designated by law as basic petrochemicals, which include ethane, propane, butane, pentane, hexane, heptanes, carbon fumes, naftas and methane from hydrocarbons. The same considerations with respect to health, safety and environmental requirements mentioned in the preceding question apply to this activity.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

All labour relationships are governed by the Federal Labour Law, which provides that all working establishments must ensure that at least 90 per cent of its workforce is Mexican and, with regard to technical and professional personnel, all workers must be Mexican except when they are not of a particular speciality, in which case foreign workers may be employed as long as they do not exceed 10 per cent of that speciality. This provision does not apply to officers, directors or managers.

There is also a no discrimination provision in the Federal Labour Law that provides that there will be no distinctions between workers for reasons of race, sex, religion, age, political views or social status. Complaints may be filed before the Conciliation and Arbitration Board, which will resolve the dispute between employer and worker and assign a settlement.

In addition, most industries' workers are part of their own union, and the oil industry is no exception. The oil industry workers are members of the Petroleum Workers' Union, and must adhere to the union's rules and regulations in addition to being governed by the collective bargaining agreement negotiated by the union on behalf of all workers.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The Secretary of Finance and Public Credit establishes a special tax regime applicable to Pemex only, which is reviewed and approved every year by Congress and published in the Federal Income Law. As of 1 January 2006, only PEP's fiscal regime is contained in the Federal Rights Law.

Pemex pays the Mexican government diverse taxes and contributions mainly from the extraction of oil, the sale of oil products and services of oil activities and oil exports. The percentages vary every year, but collectively they represent a tax of approximately 63 per cent of income.

All companies contracted by Pemex to perform any of the activities that allow private participation are subject to the ordinary tax regime applicable to all Mexican corporations, and must pay income tax, asset tax, value added tax and other taxes applicable to any particular transaction. The Secretary of Finance and Public Credit may also determine tax incentives applicable to certain activities in light of a particular strategy the federal government wants to develop for a certain area, which may be transitory or permanent incentives. Tax returns are filed every year before the Secretary of Finance and Public Credit.

In addition, the contractors and assignees that operate exploration and production contracts are required to pay taxes for the activity of exploration and extraction of hydrocarbons in the contract area and assignment area, respectively, as defined in the corresponding contract or assignment.

The taxes for the activity of exploration and extraction of hydrocarbons shall be calculated monthly, applying for each square kilometre included in the contract area or assignment area, the following values:

- during the exploration phase: 1,500 pesos, and
- during the extraction phase: 6,000 pesos.

For the purposes of this article, the exploration phase includes from the execution of the contract or assignment to the start of the extraction phase, which comprises from the start of the activities destined for the commercial production of hydrocarbons up to the contract or assignment's duration.

For the calculation of the tax referred to in this article, in cases where the contract area or assignment area is located in a fraction of a square kilometre, the hundredth shall be considered.

The tax values shall be annually updated on the first of January, considering the period between from the previous 13th month up to the last month prior the month in which the values were updated.

No taxes shall be payable for the activity of exploration and extraction of hydrocarbons, in cases where the taxpayer justifies that for causes non attributable to him, her or it, he, she or it is unable to perform activities of exploration and extraction of hydrocarbons in the contract area or assignment area, as applicable.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

There is no mandatory price setting for crude oil or its products. Pemex sells oil barrels and products at international market prices, using significant US markets as reference to prices published in Platts in a predetermined geographic area. To obtain a price, Pemex averages the price per barrel of the Mexican oil blend based on several oil types. Therefore, prices are based on the cost of opportunity to local consumers – that is, the price they would have to pay if Pemex did not supply the specific product – and it would have to be obtained in the nearest market, the US. Since all income obtained by Pemex is federal, Congress sets a price estimate every year with information from Pemex which is published in the Federal Income Law.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Federal Competition Commission is the government agency that prevents or punishes anti-competitive practices, pursuant to the Federal Economic Competition Law. Since oil activities constitute a strategic area of national development and are reserved exclusively to the state, the competition laws have no application in this regard. However, the competition laws and rules do apply to private entities with economic activity in the country. All private entities subcontracted by Pemex must comply with the competition laws and regulations.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

The parties that intend to enter into a transaction where its value exceeds a certain amount, whose total sales exceed a certain amount or as a result of the transaction a certain amount of assets are concentrated in a particular entity or group, must first notify the Federal Competition Commission of such transaction. The Commission then gives its approval or refusal on whether the transaction should take place. The commission issues a resolution regarding the transaction within 45 days following the receipt of the notice, with 20 additional days in case additional documents or information are required. The Commission, at its discretion, may also extend this term in the event of exceptionally complex cases.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Since the exploration, production, refinement, transportation, storage, distribution and first-hand sales of oil are state-controlled activities, the government makes its own regulatory policy and is not subject to international treaties. For example, NAFTA (North American Free Trade Agreement) contains a reservation regarding the energy chapter where Mexico confirms state ownership over oil resources. The only international and multilateral agreements that may affect regulatory policy are those related to environmental issues.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

The only limitation is that the holders of exploration and production contracts are Mexican companies.

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41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Exports of crude oil and oil products are made through the international subsidiary of Pemex, PMI Comercio Internacional (PMI). PMI sets the rules that apply to oil commercialisation abroad, including for the execution of agreements and relationships with clients. Some restrictions on the export of oil and its products are imposed by the Secretary of Energy and include an export platform where oil exports are limited to a certain level every year, depending on current market trends. Crude oil may not be resold abroad without express authorisation from PMI.

Morocco

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The Moroccan hydrocarbon legislation distinguishes oil and gas upstream activities including reconnaissance, exploration and exploitation activities, either conducted onshore or offshore, and downstream activities relating to import, export, refining, collection, storage and distribution.

Over the period 2000–2011, a total of 50 wells were drilled in Morocco by the National Office of Hydrocarbons and Mines (ONHYM) and its partners, 42 onshore and eight offshore. However, to date, Morocco still remains underexplored in terms of oil exploration and the present trend is to develop the attractiveness of its hydrocarbon opportunities, relating to either conventional or unconventional reserves.

The oil and gas industry is represented by approximately 34 local and international oil companies, partners of the ONHYM, including major companies such as BP, Chevron and Total, super-independent companies such as Repsol and Kosmos and independent companies such as Gulfsands (Cabre), Circle Oil, Chariot, Samir, Longreach, Gas Natural or IGIF. To date, the Moroccan oil activities remain at the exploration stage and no exploitation concession has yet been granted to an operator (as opposed to gas activities).

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

According to 2012 energy-related figures obtained from the Moroccan Ministry of Energy and Mines (MMEM), 60.7 per cent of the Moroccan energy consumption was provided by oil and petroleum products where coal represented 22 per cent, exchange of electricity 7.2 per cent, natural gas 6.7 per cent, hydropower 2.3 per cent and wind energy 1.1 per cent. It is also to be noted that Morocco imports 95 per cent of its energy needs.

The steady need for petroleum products considerably increases the national energy bill. The energy bill is affected, in particular, by the imports of crude oil, petroleum products, electricity and other hydrocarbons and energy products. It should also be noted that Morocco is developing the capacity of its renewable energies as illustrated by its solar energy and wind energy plans that intend to reach a production of 4,000MW in 2020.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Given the high energy demand, the need for energy security and energy self-sufficiency, Morocco is constantly developing and improving its energy policy on both the fossil energies and renewable energies. Along with the attractive scheme for oil and gas activities set forth by Moroccan law, the MMEM took several measures to promote these activities in Morocco and, in particular, to foster the research, exploration and exploitation of its existing and potential natural resources existing in its soil and subsoil and in the Moroccan water territory. For instance, in December 2014, the MMEM launched an action plan for liquefied natural gas.

The diversification of resources and, in particular, the development of renewable energies such as solar and wind energies, is also considered as fundamental, and growing policies are implemented in this field.

4 Is there an official, publicly available register for licences and licensees?

Exploration permits and exploitation concessions are granted by Ministerial orders which are officially published in the Official Gazette and may be consulted by any person. Unlike exploration permits and exploitation concessions, reconnaissance licences are granted by simple decision of the Minister for Energy. These licences are not published officially, but are registered in a special register at the MMEM. Access to such information may be granted by the MMEM. The ministry may provide such access and information to a potential operator in negotiations with ONHYM.

5 Describe the general legal system in your country.

The legal system of Morocco, which is based on civil law, is stable and covers most of the areas of law. The 2011 Moroccan Constitution reinforced principles of transparency, independence of the judiciary system, protection of rights and respect of the law and economic freedom. However, the current government has not yet passed some important reforms, particularly in the fight against corruption, for the good governance of the public entities, in modernising institutions and providing better and fairer access to justice.

Despite several anti-corruption measures taken in the past decade, and particularly the ratification in 2007 and entry into force in 2008 of the United Nations Convention against Corruption signed in New York in 2003 (UNCC), which led to the creation of the Central Agency for the Prevention of Corruption (ICPC), created to prevent corruption but which has no power to investigate or prosecute, corruption remains an issue in Morocco. Morocco is ranked 80 from 175 countries on the corruption perceptions index (CPI) with a score of 39/100 in 2014. Recent bills adopted by the government, especially regarding the reform of the ICPC and the law on the right of access to information (both currently before the Moroccan parliament and expected to be adopted in the course of 2015) have been highly criticised by the civil society and anti-corruption organisations such as Transparency Maroc, in particular for their lack of effectiveness. Under articles 248 to 256-1 of the Moroccan Penal Code, the term 'corruption' may include different material facts, such as influence peddling, embezzlement and extortion. The Penal Code defines corruption above all as a way to facilitate operations through a corrupt official's functions.

The Moroccan Civil Procedure Code provides that foreign judgments are enforceable in Morocco through the exequatur procedure before the Moroccan court where the defendant's domicile is located or where the judgment shall be enforced. This court shall verify that the foreign court was competent and that the decision does not contravene Moroccan public policy.

The Moroccan Civil Procedure Code also provides for enforcement via exequatur regarding domestic or international arbitral award. It should be noted that international arbitral awards will be enforceable if their existence is established and if they do not contravene national or international public policy.

Morocco is a contracting party (since 1959) of the New York Convention of 1958 on Recognition and Enforcement of Foreign Arbitral Awards and recognises and enforces awards made in the territory of another contracting State. Morocco is also a party of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and has entered into several bilateral investment treaties which provide for the resolution of dispute through arbitration.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The laws and regulations directly applicable to the reconnaissance, exploration and exploitation of oil and gas resources in Morocco, onshore or offshore, are the following:

- Law No. 21-90 relating to the exploration and exploitation of hydrocarbons deposits, enacted by Dahir No. 1-91-118 dated 1 April 1992, as amended by Law No. 27-99 enacted by Dahir No. 1-99-340 dated 15 February 2000 (Law No. 21-90 (the Hydrocarbon Law)); and
- Decree No. 2-93-786 dated 3 November 1993 implementing Law No. 21-90, as amended by Decree No. 2-99-210 dated 16 March 2000 (Decree No. 2-93-786, together with Law No. 21-90 (the Hydrocarbon Code)).

In addition to the Hydrocarbon Code, the laws and regulations applicable to the downstream oil and gas activities are:

- Law No. 1-72-255 relating to the import, export, refining, collection, storage and distribution of hydrocarbons, enacted by Dahir dated 22 February 1973, as amended by Law No. 4-95 enacted by Dahir No. 1-95-141 dated 4 August 1995 (Law No. 1-72-255); and
- Decree No. 2-72-513 dated 7 April 1974 implementing Law No. 1-72-255.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

There are no specific provisions in the Hydrocarbon Code that allow for expropriation of a licensee's interest.

More generally, pursuant to Law No. 7-81 relating to the expropriation for public utility and temporary occupation, enacted by Dahir No. 1-81-254 dated 6 May 1982, a right of expropriation is opened to the Moroccan authorities, as well as to other legal public and private entities or to natural persons to whom the Moroccan state delegated such a right in order to perform works and operations of public utility.

According to Law No. 7-81, expropriation may only legally take place following specific formalities and conditions including, in particular, an administrative act declaring of public utility the area subject to a potential expropriation and the filing of a request for expropriation and possession before the administrative court that will rule on the expropriation and removal of the expropriated entity or person and the amount of compensation to be paid.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The MMEM and the Moroccan Minister of Finance (MMF) are the public authorities in charge of the Moroccan hydrocarbon activities.

In addition to these government authorities, there is a public office, the ONHYM, created by Law No. 33-01 enacted by Dahir No. 1-03-203 dated 11 November 2003. This public office conducts reconnaissance, exploration and exploitation of hydrocarbon deposits, as well as mineral deposits and any mineral substance (excluding phosphates). It is placed under the control of the MMEM and the performance of its commercial activities is subject to the control of the MMF.

Pursuant to article 71 of Law No. 21-90, the Moroccan state has delegated to the ONHYM, in particular, the following activities:

- conclusion of petroleum agreements with oil companies;
- holding of participation interests in exploration permits or exploitation concessions reserved for the Moroccan state (ie, no more than 25 per cent); and
- exercising of pre-emptive rights (ie, in the event of a total or partial transfer of interests in favour of a third party other than the parent company or an affiliate of the transferor, the Moroccan state may exercise a right of pre-emption).

9 What government body maintains oil production, export and import statistics?

Statistics relating to oil production, export and import are prepared and made available by several public authorities such as the Department of Statistics of the High Commissioner for Plan, which is the Moroccan public body in charge of the production, the analysis and the publication of official statistics in Morocco and the MMEM, through its website. The ONHYM may also keep and update databases relating to the exploration and exploitation of hydrocarbons.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

According to article 1 of the Hydrocarbon Law, oil reservoirs constitute part of the public property of the state.

In order to carry out any hydrocarbons reconnaissance, exploration or exploitation activities in Morocco, any operator must, therefore, obtain from the Moroccan authorities either a reconnaissance licence, an exploration permit or an exploitation concession. Exploration permits and exploitation concessions are titles of a limited duration that do not give their holder any proprietary right over either the soil itself or the sub-soil.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Oil operators are entitled to carry out both onshore and offshore activities in Morocco. The areas that may be subject to an oil exploration and production are determined at the time of the granting of the corresponding permits or concessions.

Moroccan authorities may determine areas where such oil activities can be restricted for environmental, military, agricultural or other reasons of general interest.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The MMEM is in charge of reviewing oil operators' applications for reconnaissance licences, exploration permits and exploitation concessions.

Reconnaissance licences are granted further to the conclusion of a reconnaissance agreement with the ONHYM and upon the filing of a request by a decision of the MMEM, specifying the terms and conditions of the licence (validity period, validity area, etc).

Once the reconnaissance works are completed, the parties to the reconnaissance agreement (or third parties) may decide to begin exploration works under an exploration permit. In that respect, the ONHYM and the oil operator shall enter through bilateral negotiations into a petroleum agreement setting the respective rights and obligations between them for exploration and, as the case may be, exploitation.

Following the negotiation and finalisation of the draft petroleum agreement, the latter shall be communicated to the MMEM for an agreement in principle, and the request for an exploration permit may be filed.

The MMEM is in charge of granting exploration permits through a ministerial order within 60 days following the date of filing of the request. It is granted following the approval of the corresponding petroleum agreement by joint ministerial order of the MMEM and the MMF. Exploration permits may only be granted to one legal entity or several legal entities on a joint ownership basis. In addition to the petroleum agreement, the ONHYM and its partners shall enter into an association agreement setting up the relations between the parties.

Following the exploration works, should an exploration permit holder discover an oil deposit that may be commercially exploited, it is entitled to request an exploitation concession relating to this deposit, provided that it has fulfilled its legal and contractual obligations.

The request for an exploitation concession shall be submitted to the MMEM no later than three months before the term of the validity period of the corresponding exploration permit. This concession is awarded by decree upon proposal of the MMEM.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

In order to carry out oil exploration and exploitation activities in Morocco, any operator must enter into a petroleum agreement with the ONHYM (representing the Moroccan state), and provide the ONHYM (representing the state) with no more than a 25 per cent interest in the exploration permit and, as the case may be, the exploitation concession.

The ONHYM also participates in the operatorship of oil titles since it may, in compliance with Law No. 33-01, in any authorised area, develop oil exploration and perform oil exploitation activities relating to hydrocarbons deposits.

In that respect, the ONHYM benefits from a specific legal regime that entitles it to hold titles and permits without being bound by the legislative and regulatory constraints on the number and nature of these titles and permits and the maximum surface area of exploration permits. The ONHYM can either act independently, or conclude partnerships with private entities, whether Moroccan or not.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

The Hydrocarbon Code provides for the fees and royalties that should be paid by operators to the Moroccan state.

In that respect:

- any legal entity (other than a public body) has to pay an administration fee amounting to 1,000 dirhams for each request for an exploration permit and its extension;
- any holder of an exploitation concession has to pay, in accordance with its interest share should there be more than one holder, an annual surface rental fee amounting to 1,000 dirhams per km^2 exploited; and
- any holder or co-holder of an exploitation concession has to pay an annual concession fee relating to its interest in the production of hydrocarbons issued from the concession, payable in compliance with the terms and conditions of the petroleum agreements.

The rates corresponding to this concession fee are the following:

- onshore and offshore with a water depth inferior to 200 metres: oil – 10 per cent, gas – 5 per cent, with an exemption for the first 300,000 tons of oil and 300 million m^3 of gas produced in the concession; and
- onshore and offshore with a water depth superior to 200 metres: oil – 7 per cent, gas – 3.5 per cent, with an exemption for the first 500,000 tons of oil and 500 million m^3 of gas produced in the concession.

The Hydrocarbon Code and the General Tax Code do not provide any tax stabilisation measures. However, the Hydrocarbon Code provides tax incentives applicable to the holder of exploration permits or exploitation concessions (see question 35).

15 What is the customary duration of oil leases, concessions or licences?

With regard to oil upstream activities, reconnaissance licences may be granted for a maximum initial period of one year and extended for one or several periods of a maximum duration of one year each, either for part of or for the same area, provided that undertakings concerning the first period have been fulfilled.

Exploration permits may be granted for a maximum eight-year period. However, when a discovery of hydrocarbons occurs during the last year of validity of the permit, its duration may be extended for an exceptional period of maximum two years for the assessment of such discovery.

The maximum validity period for an exploitation concession amounts to 25 years. However, one sole exceptional extension that cannot exceed 10 years may be granted, if the rational and economic exploitation of the deposit justifies it.

16 For offshore production, how far seaward does the regulatory regime extend?

The provisions of the Hydrocarbon Law apply to the maritime area comprising the seabed and sub-soil of the adjacent regions of the Moroccan coastline up to a water-depth that still allows the exploitation of hydrocarbons deposits, without prejudice to, in particular, international conventions ratified by the Moroccan state.

Any duly authorised oil company is entitled to conduct offshore activities in the territorial waters, the continental shelf and the exclusive economic zone of Morocco with perimeter zones delimitated, in particular, pursuant to Moroccan maritime law.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

There is no fundamental difference between the onshore and the offshore regimes. Notwithstanding the preceding, in particular, maximum surface areas that may be subject to an exploration permit by one legal entity differ between onshore and offshore regimes.

The rules that are contained in the Hydrocarbon Code apply both for crude oil and natural gas with only slight differences (eg, rates of the concession fee, see question 14). However, the exploration and production of oil shale is not governed by the Hydrocarbon Code but by the Mining Code (Decree of 16 April 1951). At present, the regulation of shale gas is under discussion between the Moroccan government and, in particular, the ONHYM.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Pursuant to the Hydrocarbon Code, any legal entity may conduct exploration and production activities in Morocco. Please note that there is no distinction made between Moroccan and foreign entities. In any event, any operator applying for an exploration permit must give evidence of its technical and financial capacity, necessary to complete its exploration works and undertake to fulfil a minimum programme of works accompanied by a financial undertaking.

There are no specific requirements under the Hydrocarbon Code to register a branch or a company in Morocco in order to carry out oil and gas activities. The branch of the non-resident license or permit holder or the company shall be registered with the Moroccan authorities (the local trade register and tax centre, as well as if applicable with the foreign exchange office).

The decision to set up a branch or a company will be determined on several criteria, such as whether or not the interest holder is the operator or not (in the case of a joint-venture with other holders), the duration of the contemplated works, the nature of the works, etc. As such, several types of entities are available under Moroccan company legislation, including corporations with limited liability.

19 What is the legal regime for joint ventures?

Moroccan law does not forbid the use of unincorporated joint ventures (JVs), except where it is expressly provided that a JV should be incorporated. Hydrocarbon mining and energy projects throughout Morocco are frequently conducted through contractual unincorporated JVs.

An unincorporated JV does not have a technical legal meaning under Moroccan law. This term is used to describe a variety of business arrangements involving two or more parties pursuing a joint undertaking with a view to mutual benefit. An unincorporated JV is essentially a business relationship in which the participants hold the JV property themselves in agreed shares, rather than through ownership of a corporate entity which owns the JV property. These unincorporated JVs are mostly governed by the Moroccan Obligations and Contracts Code.

The incorporated JVs (companies) are governed by the Moroccan Obligations and Contracts Code and by the relevant applicable law (eg, Law No. 5-96 and Law No. 17-95).

The Hydrocarbon Code does not provide a specific legal regime for JVs nor does it impose any form of JV between the operator and the ONHYM. However, the petroleum agreement and association contract will provide for the rules applicable to this JV.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

In accordance with article 30 of Law No. 21-90, when a reservoir extends beyond the limits of one or several adjoining exploration permits, its development and exploitation must be performed, as the case may be, through a so-called unitisation agreement between the holders of such licences, according to terms and conditions that shall be approved by the administration.

If such an agreement cannot be entered into between the holders of the adjoining exploration permits, the dispute will be resolved by technical rules laid down by the administration, taking into account, in particular, the extent of the deposit and its conservation.

In the event that there are no adjoining permits, the holder of the exploration permit where the initial discovery was made may, in the context of a new petroleum agreement, extend its application for an exploitation concession to cover all of the area of the deposit.

21 Is there any limit on a party's liability under a licence, contract or concession?

Provisions pertaining to parties' liabilities may be specified at the time of the conclusion of the petroleum and association agreements between the ONHYM and its partners.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

It is often provided in reconnaissance agreements that the operator must issue or procure the issuance of an irrevocable bank guarantee in favour of the ONHYM for the amount specified in the agreement. The operator failing to comply with its minimum work programme obligations will be subject to the payment of a penalty to the ONHYM, which will be of the same amount as the bank guarantee.

In order to obtain an exploration permit, the operator and the ONHYM enter into a petroleum agreement and an association agreement. In accordance with article 22 of the Hydrocarbon Law, the holder of an exploration permit may have the obligation to provide a security deposit (caution) in order to guarantee its contractual obligations. The guarantee usually requested by the ONHYM is a performance bond (bank guarantee) for the minimum work programme.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

There are no specific obligations upon operators to prefer, or use a minimum amount, of locally sourced goods or services. However, these elements will form part of the negotiations with the ONHYM at the time of the entering into the petroleum agreement.

It should be noted that, according to article 50 of the Hydrocarbon Law, holders of oil titles and their contractors and sub-contractors benefit from an exemption from all duties and taxes on the importation of equipment, materials and consumable products intended for use in the reconnaissance, the exploration and the exploitation of hydrocarbons and in activities ancillary thereto. However, the above exemption will not be granted if such equipment, materials and consumable products can be supplied by the local market at a price within a maximum excess of 10 per cent of the CIF price and on equivalent conditions of quality and terms of delivery.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

As explained above, there are no specific legal obligations to choose or use a minimum of locally sourced goods, services or capital. However, Moroccan labour law provides for a national preference procedure for the hiring of employees in Morocco. Moreover, the Moroccan foreign exchange office may control and limit the transfer of funds outside Morocco (transfers from Morocco for importation of goods or services shall comply with the foreign exchange regulations).

Some specific goods might be forbidden to import or be subject to high import duties. However, article 50 of the Hydrocarbon Law provides for specific rules in this regard (see question 23).

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

In accordance with article 8 of Law No. 21-90, the total or partial transfer of any interest in an exploration permit or exploitation concession is subject to the prior governmental consent (ie, by a ministerial order of the MMEM in the case of exploration permits and a decree upon proposal of the MMEM in the case of exploitation concessions). Contrary to the other oil titles, reconnaissance licences are non-transferable.

The Hydrocarbon Code does not provide any specific timetable for this process. However, in practice, our experience is that the timescale for assignment of an interest in a permit is more or less the same as for the grant of a permit under article 7 of Decree No. 2-93-786 (ie, 60 days from the date the application is filed).

The Moroccan state is entitled to exercise a pre-emptive right where the transfer of the exploitation concession is made to the benefit of a third party other than the parent company or an affiliate of the transferor. The pre-emptive right is valid for a period of 120 days from the date of notification by the concessionaire of its intention to enter into a deed of transfer.

The Hydrocarbon Code does not contain any provisions relating to the change of control of a company holding oil and gas assets. There should be no requirement to obtain the prior approval of the Moroccan authorities. Nevertheless, it is recommended to notify such a change of control of the operator to the ONHYM.

26 Is government consent required for a change of operator?

Yes, if the change of operator is because of the transfer of the exploration permit or exploitation concession (see question 25). The Hydrocarbon Code does not provide any specific rules in the case of interest shared between several permit or concession holders (other than the ONHYM), and the parties are willing to assign a new operator among themselves. The association contracts usually provide for rules governing the change of the operator. In the case of an amendment to the petroleum agreement being signed between the co-holders (including the ONHYM), it would have to be approved by the MMEM and the MMF.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

No specific fees are applicable in the case of a transfer or change of control of the permit or concession holder established outside Morocco. However, in the event the transfer or change of control concerns a Moroccan company, the shares transfer transaction will be subject to registration fees In Morocco.

However, it should be noted that if the shares of an exploration permit or exploitation concession are transferred, the price paid to the seller will be taxable for corporate income tax purposes (subject to non-double taxation treaty provisions).

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

According to article 6 of the Hydrocarbon Law, the concession and its outbuildings (field, buildings, machinery, equipment, etc) freely return to the Moroccan state upon the ending of its term, free of any charges. The holder of the concession title shall, in that respect, put the outbuildings relating to the concession in a state allowing the pursuance of the normal exploitation of the reservoir. Should the carrying out of the exploitation be no longer justified, the holder of the concession title has the obligation to clean the site in accordance with good oil sector practice.

In addition, any holder of an exploration permit or an exploitation concession having performed its obligations within the allotted time is entitled to abandon its title, either in whole or in part. When the permit or the concession is held jointly, the abandonment of one co-holder does not avoid the said titles if the other holders take responsibility of the undertakings of the leaving co-holder. Should one concession co-holder decide to withdraw either partially or totally, the Moroccan state may exercise a priority right over all or part of the relinquished concession.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

The Hydrocarbon Code does not provide for any rules on security deposits specifically aimed at future decommissioning liabilities. However, this matter could be subject to negotiations with ONHYM.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

It should be noted that transportation of hydrocarbons is considered as an ancillary activity by the Hydrocarbon Code and that oil operators must abide by the rules set forth therein.

Attention should be drawn to, in particular, the Dahir dated 30 December 1927 relating to the transportation of hydrocarbons and liquid fuels, as well as Law No. 30-05 relating to the transportation by road of dangerous goods, specifying obligations to be respected by operators, and its implementing Decree No. 2-14-85 of 20 January 2015.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

See question 30.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Under article 38 of Law No. 21-90, legislation and regulations in force relating to security and public health, the environment, security and hygiene of personnel, accommodation, the most effective use and conservation of deposits, the protection of springs, public highways and buildings and, as regards maritime exploration, the protection of marine life, of the environment and the safeguard of navigation 'may in no way be waived at the time of delivery of a reconnaissance licence, an exploration permit or an exploitation concession'.

In that respect, petroleum agreements must include, in particular, provisions relating to the respect of the environment. In addition, the holder of an exploration permit or an exploitation concession must take out insurance against any damage caused to the environment.

Without prejudice to the application of any other relevant sanctions and penalties applicable under Moroccan law, exploration permits and exploitation concessions may be forfeited by the administration should their holders fail to comply with any of their undertakings given at the time of the granting of their oil title.

It should be noted that there are several specific laws relating to water, air, waste management and more generally the environment including:

- Law No. 10-95 relating to water;
- Law No. 11-03 and Law No. 12-03 on the environment and the Environment Impact Assessment Study (EIAS) providing for general obligations on projects that may have an impact on the environment;
- Law No. 13-03 relating to air pollution; and
- Law No. 28-00 related to waste management and removal.

It should be noted that specific administrative authorisations may also have to be obtained pursuant to the Dahir dated 25 August 1914 governing insanitary, inconvenient or dangerous establishments.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

Oil products composition is defined precisely in ministerial orders, such as the Ministerial Order No. 1546-07 of the Minister of Energy and Mines relating to the characteristics of petroleum products. In the case of fraud, products can be seized by customs.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

There is no specific labour regulation in connection with the oil and gas industry in the Moroccan Labour Code. In order to recruit foreign employees, any employer must, according to article 516 of the Labour Code, obtain an authorisation from the Employment Ministry. A fine of between 2,000 and 5,000 Moroccan dirhams will be imposed on the employer should he or she fail to comply with such a requirement.

There is no minimum requirement relating to a minimum amount of local labour that must be employed. However, the actual policy of the authorities is to favour local employees.

There is no training fund for the local workforce, but according to article 37 of the Hydrocarbon Law, the holder of an oil title must contribute to the training of executives and technicians in the oil industry by including them in the works performed and providing them with specific training. However, in practice, it should be noted that the ONHYM may provide personnel and assist with the hiring process. Petroleum agreements usually require that the operator hires Moroccan nationals to the greatest extent possible and provide the ONHYM employees with specific training.

The Labour Code in article 9 provides for a general requirement relating to anti-discrimination by prohibiting any form of discrimination related to the colour, race, sex, disability, marital status, religion, political opinion, etc, against employees. Non-compliance with such provisions is liable to a fine of between 15,000 and 30,000 Moroccan dirhams.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

These activities are taxed under the common Moroccan tax rules, subject to a certain number of tax advantages granted by the Moroccan state to oil and gas operators in order to promote their activities in Morocco.

Below are listed some tax incentives provided under the Hydrocarbon Code:

- the holder, or as the case may be, the co-holders of any exploitation concession benefit from a total exemption on corporate income tax during a 10-year period starting as from the date of the beginning of the regular production of any exploitation concession;
- all equipment, products and services necessary for the reconnaissance, exploration and exploitation works are exempted from value added tax (VAT) and customs rights; and
- the profits and dividends of the exploitation concessions holders (and those of the shareholders of the concession companies) are exempted from any taxes and may freely be repatriated outside Morocco without limitations for foreign entities.

The holder of an exploration permit or an exploitation concession benefits from an exemption on Business Licence Tax.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

There is no mandatory price-setting regime in Morocco for crude oil. Reference to price-fixing of crude oil is made in petroleum agreements in accordance with principles set forth in the Hydrocarbon Code.

It should be noted that pursuant to Moroccan competition and price-fixing laws and regulations, liquid and gas fuel prices are regulated. The Moroccan government has recently set up a price-indexing system for certain liquid fuels, with prices fixed twice a month. The government (through the Caisse de Compensation) provided subsidies for oil products. However, the government decided to stop the subsidies by the end of 2015. Therefore, the prices for oil products will also be governed under Law No. 104-12 on freedom of prices and competition.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

Law No. 20-13 (adopted in 2014) on the Competition Council modified the existing body, in order to provide more powers in particular to prevent, investigate and sanction anti-competitive practices.

The head of government may also be part of the process (in particular regarding merger control situations).

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

According to Law No. 104-12 on freedom of prices and competition (adopted in 2014), concentration and anti-competitive practices are forbidden. The Law provides for three forbidden anti-competitive practices:

- anti-competitive agreements or concerted practices, either horizontal or vertical, tacit or express, including cartels, restrictions to market access or production, market sharing, bid rigging, etc (article 6);
- abuse of a dominant position or of a situation of economic dependence towards a supplier or customer that does not have any equivalent alternative option. Such abuses may consist of, among others, refusal to sell, tie-in sales, discriminatory conditions of sale, termination of commercial relationships based on a mere refusal to submit to unjustified conditions of sale, minimum resale prices and minimum margin (article 7); and
- abusively low pricing (article 8).

According to article 9 of Law No. 104-12, the practices below are not subject to articles 6 and 7 above if:

- resulting from the application of a statute or statutory instrument made thereunder;
- the companies can prove that they have the effect of contributing to economic progress or technology, including the creation or retention of jobs, and that they allow consumers a fair share of the resulting benefit without giving the undertakings concerned the possibility of eliminating competition in a substantial part of the goods, products and services in question. These practices must not impose restrictions on competition insofar as they are necessary to achieve this progress.

Certain categories of agreements and certain agreements, particularly when they are intended to improve the management of small and medium enterprises or marketing by farmers for their products, may be recognised as satisfying the conditions in the first paragraph above by administering the assent of the Competition Council.

Also not subject to the provisions of articles 6 and 7 above are agreements of minor importance which do not appreciably restrict competition, in particular agreements between small and medium enterprises. The criteria quantifying what is not an appreciable restriction of competition will be determined by regulation.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Morocco is a party to several free-trade agreements (FTAs) concluded, in particular, with Turkey, the United States and several Arab countries. It is also a party to an Association Agreement with the European Union, which came into effect in 2000. Morocco is now negotiating an FTA with the European Union. Morocco has also concluded several double tax treaties and agreements relating to the promotion and mutual protection of investments with several countries such as France or the United States.

It should be noted that Morocco is not a member of several international organisations related to oil activities, such as the Organization of the Petroleum Exporting Countries, the Organization of Arab Petroleum Exporting Countries or the African Petroleum Producers' Association.

Industrial development strategies, infrastructure improvements and the creation of a financial centre, highlighted, in particular, by a new port, a free trade zone near Tangier and the creation of Casablanca Finance City, are improving Morocco's competitiveness.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Moroccan legislation and regulations apply equivalently to both Moroccan nationals and foreign investors (see question 18).

It should, however, be remembered that the Moroccan state, through the ONHYM, shall have a no more than 25 per cent interest in any exploration permit or exploitation concession, this being negotiated at the time of the entering into the petroleum agreement.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Pursuant to article 41 of the Hydrocarbon Law, any holder of an exploitation concession, before contemplating exporting its share of production, must first contribute to the needs of the local market according to the conditions defined in the petroleum agreement.

* *The author would like to thank Néna Lardy for her participation in preparing this chapter.*

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The Strategic Plan for the Concession of Areas for Petroleum Operations published on 8 June 2009 states that the sedimentary basins in Mozambique have areas with great potential for the presence of oil. The Mozambique basin, which is 300,000km², has a density of around one well per 8,000km² onshore and one well per 17,000km² offshore, while the Rovuma basin, which is 60,000km², has a density of one well per 17,000km² onshore and none offshore.

All petroleum resources located in the soil, subsoil, inland waters, territorial sea, continental shelf and in the exclusive economic zone, are the property of the state. The state controls the prospecting, exploration, production, transport, commercialisation, refining and transformation of liquid and gas hydrocarbons and their derivatives including petrochemicals and liquid natural gas (LNG) and gas for liquids (GFL) activities.

Control of the country's upstream oil industry rests with the parastatal upstream oil company Empresa Nacional de Hidrocarbonetos EP (ENH) (the National Hydrocarbon Corporation), which has exclusive rights to explore for and develop petroleum in Mozambique, and is permitted to exercise these rights in association with foreign investors.

As per the recently enacted Petroleum Law, ENH is responsible for participating in all petroleum operations and the respective stages of the activities, from prospecting, exploration, production, refining, transport, storing and commercialisation of oil and gas and their derivatives, including LNG and GTL inside the country or abroad, and is also responsible for managing the oil and gas quotas destined for the development of the national market and the country's industrialisation. The Petroleum Law expressly states that any investor interested in the exploration of petroleum resources in Mozambique shall enter into a partnership with ENH.

The Petroleum Law also provides that the state shall ensure that not less than 25 per cent of petroleum produced in the country be dedicated to the national market.

The main players operating in the upstream industry in Mozambique include the South Africa-based company, Sasol Petroleum International; the American company, Anadarko; the Italian multinational, ENI; the Japanese company, Mitsui; the Portuguese energy company, Galp; PTTEP from Thailand; the Indian energy companies, BPRL and Videocon; China National Petroleum Corporation; and South Korea's KOGAS, most of which have participating interests in the prolific Rovuma Basin.

The downstream oil industry relies on imports, mostly from South Africa. Distribution and marketing of fuel products and lubricants is carried out by the state-owned oil company Petromoc. Other companies operating in the downstream include BP, Galp, Total and Engen.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Mozambique's main source of energy is biomass-based fuel, especially charcoal and firewood, representing around 80 per cent of annual consumed energy.

Hydropower is the dominant source of electricity, accounting for 99.7 per cent of the total. However, it provides only 11 per cent of the country's total energy requirement.

At present, there is no oil refinery and, as a result, all refined products must be imported. Mozambique consumes and imports approximately 16,000 barrels per day, the bulk of which is in the form of diesel. Half of the petroleum is consumed by the transport sector.

Mozambique's great potential is still to be exploited, and one of the foundations of the country's energy sector strategy is to encourage investment in projects of exploration, appraisal and production of hydrocarbons. This will help to continue lowering poverty levels in the country, specifically through the creation of infrastructures for the supply of energy to population centres and also by seeking to develop the country's refining industry. In this way it will be possible to avoid the high levels of fuel imports, which have a negative effect on the country's trade balance. These actions seek to diversify Mozambique's energy system and the implementation of many other strategic measures will help in meeting the objectives of the Southern African Development Community, of which it is part.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Mozambique adopted the National Energy Strategy through Resolution 10/2009 of 4 of June, which replaced the previous energy policy of 2000. Furthermore, two other legal instruments were approved, as follows: Resolution 27/2009 of 8 June, which approves the Strategy for the Concession of Blocks for Petroleum Operations and Resolution 64/2009 of 2 November, which approves the Strategy for the Development of the Market of Natural Gas in Mozambique.

The basic legal framework for petroleum operations is composed of the recently enacted Petroleum Law (approved by Law 21/2014 of 18 August) and the Petroleum Operations Regulation (approved by Decree 24/2004 of 20 August).

4 Is there an official, publicly available register for licences and licensees?

The Ministry of Mineral Resources and Energy has developed the EITI-compliant Mining Cadastre Portal to improve transparency and promote investment in the Mozambican mining and oil sector (http://portals.flexicadastre.com/mozambique/en/). At present, all mineral tenure and state mining contracts are available for viewing. Access to this portal is not subject to the payment of any fees.

The awarding of concessions falls within the scope of the Public-Private Partnership Law, approved by Law 15/2011 of 10 August (the Mega Projects Law), which determines that a concession contract is subject to a prior inspection of the Administrative Court and specific provisions of such contracts are subject to publication in the Official Gazette.

Within this context, information regarding the licences that have been awarded (as well as the licensees) becomes public through publication in the Official Gazette and at the Mining Cadastre Portal.

5 Describe the general legal system in your country.

Mozambique has a civil legal system based on its Constitutions of 1975, 1990 and 2004. For historical reasons, Mozambique's legal framework is largely based upon Portuguese Roman law, namely, it is a civil law jurisdiction.

The legal system in Mozambique is made up of the Administrative Court, the Constitutional Council and the judicial courts. The Administrative Court is responsible for reviewing the legality of administrative acts and public spending.

The Constitutional Council is responsible for ensuring the constitutionality of Mozambican legislation and considers the constitutionality and legality of the actions of the Mozambican Executive. The judicial courts are comprised of the superior courts and the lower courts. The superior courts consist of the Supreme Court and the regional appeal courts. The lower courts consist of the District Court of 1st Class, the District Court of 2nd Class and the Courts of the Province. The District Courts of 1st and 2nd Class have jurisdiction to hear both criminal and civil matters. In relation to civil matters, the size of the claim dictates which court will consider the dispute. Claims for larger amounts (ie, where the sum in dispute is greater than 100 times the minimum wage in Mozambique) will be heard in the Courts of the Province. As such, claims above approximately US$15,000 will be usually heard in the Mozambican Courts of the Province.

Generally, instituting legal actions in Mozambique can be a lengthy and expensive process, including enforcement proceedings. For example, a dispute regarding a breach of contract often will require over two years before a judgment is obtained from the Mozambican courts, and the same period of time may be applicable to an enforcement proceedings, although it is mostly dependent on the existence of assets of the debtor that may be subject to seizure.

The Arbitration Law expressly provides that arbitral awards rendered in Mozambique pursuant to the Arbitration Law should be treated and enforced in the same manner as a judgment of the Mozambican courts. In cases of non-compliance of any arbitral award, enforcement proceedings must be commenced in the Mozambican courts.

Further, as Mozambique ratified the New York Convention on 11 June 1998 (subject to reciprocity), which entered into force on 9 September 1998, the Mozambican courts are prima facie required to give effect to an arbitration agreement and recognise and enforce arbitral awards made in other New York Convention states against the assets of a party located in Mozambique.

That said, the enforcement of any foreign arbitral awards in Mozambique is subject to the subsequent consideration and recognition of the Mozambican Supreme Court. This review and recognition process does not, however, entail a review of the merits of the arbitral award itself.

Mozambique has a developed judicial system, which includes modern arbitration law largely based upon the UNCITRAL Model Law. As such, foreign investors in Mozambique have access to a neutral form of in-country dispute resolution, which is likely to be speedier and less costly than litigation before the Mozambican courts and which, in most cases, can be kept confidential.

Foreign arbitral awards may be enforceable against assets in Mozambique, provided that the requisite procedure of obtaining confirmation of enforcement from the Mozambican court has been complied with (with the exception of certain Investment Treaty Awards, as noted above). Unfortunately, decisions as to the enforcement of foreign arbitral awards in Mozambique are not regularly published. Nevertheless, those decisions that have been published to date suggest that the Mozambican Supreme Court is generally supportive of the arbitration process as a whole and of the enforcement of foreign arbitral awards. They also confirm that the review and recognition process should not entail a review of the merits of the award. However, it should be noted that the Supreme Court may be more hesitant to allow enforcement against state assets or entities on the grounds of public policy.

Investors in Mozambique should therefore give careful consideration to the structuring of their investments, in particular the seat of arbitration, when considering the enforceability of any potential arbitral awards in Mozambique.

Further, there is ongoing discussion on the entitlement of Mozambican state-owned companies to enter into arbitration agreements, since the Arbitration Law provides that the 'state and other legal persons governed by public law may enter into arbitration agreements where the agreements pertain to disputes in respect of private law or contractual relationships and also where they are so authorised by a special law'. Nevertheless, the Law on State Owned Companies stipulates that all disputes involving state-owned companies must be submitted to judicial courts, that is, excluding arbitration. Although a debate has been ongoing in this respect, the fact is that, according to our experience and to the best of our knowledge, state-owned companies have been entering into arbitration agreements.

Regarding an anti-corruption and anti-bribery regime, a Public Probity Law has been recently enacted, covering all persons vested with any kind of public powers. Under the Public Probity Law, the definition of 'civil servant' is very broad and includes anyone who works for a public entity, as well as managers, officers and workers at private entities vested with public powers. On the other hand, holders of political office are subject to additional rules on conflicts of interest and impediments. The main effect of the Public Probity Law is that it prevents holders of political office from receiving any form of retribution from state agencies or state-owned companies. Civil servants are also subject to a number of restrictions aimed at preventing them from taking part in decision-making processes whenever their personal interests might interfere in their capacity to act in an independent and impartial manner.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The principal sector-specific legislation applicable to the oil and gas sector is the following:

- the Petroleum Law (Law 21/2014 of 18 August), which establishes the regime for the granting of rights for the conduct of petroleum operations in the Republic of Mozambique;
- the Petroleum Operations Regulation (Decree 24/2004 of 20 August 2004), which set the rules for the award of the right to conduct petroleum operations in order to ensure that they are performed in a systematic manner and on such terms that allow for comprehensive and coordinated supervision. Please note that the Petroleum Law expressly provides that the government shall issue the regulations for the Petroleum Law, however this has not yet been done, hence and until such time as new regulations are issued, the Petroleum Operations Regulations remain in force in all matters that do not contradict the Petroleum Law;
- Decree-Law 2/2014 of 2 December, which establishes a special legal and contractual regime applicable to the LNG project of blocks 1 and 4 of Rovuma Basin;
- Law 27/2014 of 23 September, which establishes the specific regime of fiscal benefits and taxation for petroleum operations;
- the National Strategy for Petroleum Operations Concessions (Resolution 27/2009 of 8 June 2009), which aims to ensure the continuation of the systematic research of petroleum in the sedimentary basins of the country, stimulating the national private sector to invest in the activities of exploration and the production of petroleum and promotes foreign investment in the exploration and production in Mozambican territory, ensuring the good and efficient management of the existing areas and potential resources;
- the National Strategy for the Development of the Market of Natural Gas in Mozambique (Decree 64/2009 of 2 November 2009), aiming to maximise the benefits for the country, the reduction on importations and the conservation of the environment;
- the Environmental Regulations for Petroleum Operations (Decree 56/2010 of 22 December 2010), aiming to promote the correct and efficient environmental management of petroleum resources;
- Ministerial Diploma 272/2009 of 30 December, which approves the Regulations on the Licensing of Petroleum Installations and Facilities; and
- Decree 63/2011 of 7 December, which approves the Regulations on the Hiring of Foreign Citizens for the Mining and Petroleum Sector.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

The Petroleum Law stipulates that 'the legal safety and protection of property over assets and rights, including industrial property rights within the scope of the authorised and operated investments in the petroleum activity is guaranteed'. As a consequence, the expropriation of a licensee´s interest would be conditional on public interest or on any relevant grounds and the concessionaire would be entitled to due compensation.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The two key regulatory and oversight bodies responsible for regulating oil activities are the Ministry of Mineral Resources and Energy and the National Petroleum Institute (INP).

Moreover, the state typically participates in petroleum operations through the state-owned national oil company, ENH. ENH has as its core business, petroleum activity, notably the reconnaissance, exploration, production, transportation, transmission and commercialisation of hydrocarbons and its products, including the importation, reception, storage, handling, transit, exportation, transformation and refining of such products, and usually holds a minority stake (usually 10-15 per cent in oil and gas concessions). This interest is typically granted to ENH on a free carry basis.

In addition, the Petroleum Law (which entered into force in 18 August 2014) provides that a new authority be created to oversee extracting industries (High Authority for the Extractive Industry), nevertheless the Petroleum Law is silent as to what the powers of such authority shall be. In particular, it is uncertain whether it will be a regulatory authority or just an ombudsman, as well as to what extent its role and powers will not conflict or overlap with those of INP. It is expected that the Petroleum Operations Regulation to come will clarify this matter.

9 What government body maintains oil production, export and import statistics?

Statistics related to oil production, export and import are kept by the Ministry of Mineral Resources and Energy in collaboration with the INP. As mentioned above (see question 8), it is not clear what the role of the recently created High Authority for the Extractive Industry will be; as a consequence it is likely that that this entity will also maintain statistics.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

All petroleum resources in situ as natural resources in the soil and the subsoil, in interior waters and in the territorial sea, on the continental shelf and in the exclusive economic zone, are the property of the state.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Under Mozambican law, both onshore and offshore exploration and production activities are permitted.

There are, however, some areas that are considered off-limits to exploration and production of oil, such as those located inside areas declared as totally protected areas, including natural reserves and national parks, although an authorisation in the form of a designated special licence from the competent authority may be issued for the exercise of economic activities.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The petroleum operations shall be carried out via a concession contract following a public tender. Nonetheless it shall arguably be possible to have competitive awards or direct awards following a failed public tender, the early termination of prior concession agreement or a unitisation.

The conduct of petroleum operations is subject to the prior execution of a concession contract or other form of contract in accordance with this Law, which grants rights of:

- reconnaissance;
- exploration and production;
- construction and operation of oil pipeline or gas pipelines systems; and
- construction and operation of infrastructure.

A reconnaissance concession contract grants the non-exclusive right to carry out preliminary exploration work and assessment operations in the concession contract area, through airborne, terrestrial and other surveys, including geophysical, geochemical, paleontological, geological and topographical studies. A reconnaissance concession contract is executed for a maximum period of two years, is non-renewable and permits the drilling of wells to a depth of 100 meters below the surface or the sea bed.

An exploration and production concession contract grants an exclusive right to carry out petroleum exploration and production, as well as a non-exclusive right to construct and operate oil pipelines or gas pipelines systems for transportation of crude oil or natural gas or infrastructure for liquefaction of gas produced from the concession contract area, except where access to an existing oil pipeline or gas pipeline system or other existing infrastructure is available on reasonable commercial terms. The contracts entered into between legal entities with the purpose of submitting a request for rights or for carrying out petroleum operations are subject to the approval of the government. The exclusive right to petroleum exploration, under an exploration and production concession contract, will not exceed eight years and shall be subject to the provisions regarding abandonment of areas. In the event of a discovery, the holder of an exploration and production right may maintain the exclusive right to complete the operations initiated within a specified area, in relation to the exploration period, for completion of the work schedule and commercial value assessment or determination and to allow the petroleum development and production.

The holder of an exploration and production right may maintain, in accordance with the development plan approved by the government, the exclusive right to develop and produce oil and gas in the development production area, subject to renewal for equal or shorter periods, as it is more beneficial for the national interest.

An oil pipeline or a gas pipeline system concession contract grants the right to construct and operate oil pipeline or gas pipeline systems for the purpose of transporting crude oil or natural gas, in those cases that such operations are not covered by an exploration and production concession contract. An oil pipeline or a gas pipeline system concession contract shall be accompanied by the relevant development plan, which is an integral part of the concession contract.

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.

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.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The state reserves the right to participate in petroleum operations in which any legal entity is involved. The participation of the state may occur during any phase of the petroleum operations in accordance with the terms and conditions to be established by contract.

Although the Petroleum Law does not establish a maximum participating interest, the Mega Projects Law establishes a maximum 20 per cent interest in the share capital of the entity that has been awarded with the concession. The government is further entitled to negotiate a free carry of its participating interest in such entities in at least 5 per cent of the share capital, at any stage of the process.

As mentioned above, the state typically participates in petroleum operations through the state-owned national oil company ENH and usually holds a minority stake (usually 10 to 15 per cent in oil and gas concessions), typically granted to ENH on a free carry basis.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

According to the Law 27/2014 of 23 September, which establishes the specific regime of fiscal benefits and taxation for petroleum operations, holders of the exercise of petroleum operations are subject to petroleum production tax (royalties) equivalent to 10 per cent for crude oil and 6 per cent for natural gas. These rates may be reduced 50 per cent if the production is contributing to the development of the local industry.

Besides the royalties, the petroleum operations right holders are subject to the payment of the following taxes:

- income tax;
- value added tax;
- municipal tax when applicable; and
- other taxes established by law.

Regarding stabilisation measures, it should be noted that contracts entered into within the context of concession rights to conduct petroleum operations are qualified administrative contracts that may be unilaterally amended by the government. The concession contracts contain, among other aspects, provisions on the applicable tax regime with regard to the concession.

However, the Mega Projects Law contains certain provisions addressing stabilisation measures, under which the government is obliged to implement any necessary measures for preventing political and legislative risks that may negatively affect the sustainability of the concession. In this particular aspect, the event of a legislative alteration affecting the concession (ie, an alteration to the tax regime) may entitle the concessionaire to due compensation for any damages incurred.

15 What is the customary duration of oil leases, concessions or licences?

There are four types of concession contracts that may be entered into, depending on the nature of the petroleum operations:

- reconnaissance;
- exploration and production;
- construction and operation of oil pipeline or gas pipelines systems; and
- construction and operation of infrastructure.

A reconnaissance concession contract is executed for a maximum period of two years, is non-renewable and permits the drilling of wells to a depth of 100 meters below the surface or the sea bed.

The exclusive right to petroleum exploration, under an exploration and production concession contract, will not exceed eight years and shall be subject to the provisions regarding abandonment of areas. In the event of a discovery, the holder of an exploration and production right may maintain the exclusive right to complete the operations initiated within a specified area, in relation to the exploration period, for completion of the work schedule and commercial value assessment or determination and to allow the petroleum development and production.

The holder of an exploration and production right may maintain, in accordance with the development plan approved by the government, the exclusive right to develop and produce oil and gas in the development production area, subject to renewal for equal or shorter periods, as it is more beneficial for the national interest.

The Petroleum Law is silent in relation to the duration of the remaining two types of concession contracts, notably construction and operation of oil pipeline or gas pipelines systems and construction and operation of infrastructure.

16 For offshore production, how far seaward does the regulatory regime extend?

For the offshore production, the regulatory regime extends to inland waters, territorial waters (the territorial sea is 12 nautical miles measured from the baseline), the continental shelf and Mozambique's exclusive economic zone (which extends to a distance of 200 nautical miles).

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

The Petroleum Law defines 'petroleum' as crude oil or natural gas, or other hydrocarbons produced or capable of being produced from crude oil, natural gas, oil shales or tar sands. Apart from the different production tax applicable to crude oil and natural gas, the Law does not establish any difference of regimes for the exploration or production of different hydrocarbons.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Mozambican or foreign legal entities that are registered in Mozambique, and who demonstrate that they have the technical capability and adequate financial resources for the effective conduction of petroleum operations, may be holders of the right to carry out petroleum operations.

Foreign legal entities which directly or indirectly hold or control legal entities that own rights under a concession contract, shall be established, registered and administered under a transparent jurisdiction.

The applicants for rights regarding petroleum operations, in the form of commercial company, shall, together with the application, deposit a document showing evidence of the incorporation of the company, including the identification of the shareholders and the value of their participations.

Mozambican legal entities as well as foreign legal entities that associate with Mozambican legal entities shall have a pre-emption right in the granting of concession contracts.

The costs of the incorporation of a company are attached to the notary fees and registration fees and also to the publication of the incorporation in the Official Gazette and may vary according to the share capital of the company. The notaries and registration fees are charged under the following formula:

- if the acts that constitute the object of the public deed are up to the amount of 5,000 meticais, fees are charged at the rate of 2/1000; and
- if the acts that constitute the object of the public deed are more than the amount of 5,000 meticais, fees are charged at the rate of 0.1/1000.

For the publication of the public deed of incorporation in the Government Gazette, the competent entities charge approximately 250 meticais per page.

19 What is the legal regime for joint ventures?

There is no legal concept of joint ventures in Mozambique. However, the law foresees the concept of a consortium of companies, according to which two or more persons or companies engaged in economic activities are bound to each other jointly to undertake a certain activity of common interest parties.

The law permits certain arrangements, commonly in the form of production sharing agreements among the government, the licence holders and the oil companies, to undertake exploratory and production works.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

A petroleum deposit which is located partly in a contract area and partly in another contract area shall be developed and operated jointly or in a coordinated manner pursuant to a unitisation agreement, which is subject to approval by the government.

21 Is there any limit on a party's liability under a licence, contract or concession?

There are no limits on a party's liability. The Petroleum Operations Regulations prescribe that the operator is joint and severally liable with the concessionaire for the ordinary management of petroleum operations and is responsible, inter alia, for:

- establishing safety objectives and acceptable criteria for risk assessment;
- informing INP on the status of scheduled activities;
- involving its personnel in the development and update of the management system;

- paying compensation for damages, servitudes and expropriation of rights;
- complying with applicable regulations to petroleum operations; and
- paying the deposit set by INP.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Parental guarantees are common practice. The Petroleum Law provides that 'in order to ensure compliance with the terms and conditions of the petroleum exploration authorisations, the operators must present financial guarantee in terms to be regulated', while the Petroleum Operations Regulation stipulates that the holder of rights to conduct petroleum operations shall provide a bank guarantee or letter of guarantee from its parent company in an amount equivalent to minimum work obligations, as a guarantee for the fulfilment of the contractual duties arising from the concession contract. The law does not clarify whether the parental guarantee must be provided by the immediate parent or the ultimate parent, nevertheless, it has been understood that any parent company, irrespective of being the immediate or the ultimate, is always qualified as a parent company.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

The Petroleum Law states that the acquisition of goods or services by the petroleum operations right holders, above a set amount, must be made through public tender and this must be published in the most circulated newspapers of the country and on the internet page of the respective rightholders. Natural or legal foreign entities that provide services to the petroleum operations must associate with single or collective Mozambican entities. In the evaluation of tender, the quality of the services, the price, delivery date and offered guarantees must be taken into account. The petroleum operations right holders must give preference to local products and services when comparable, in terms of quality, to the international materials and services that are available in the time and in the quantities required and when the price, including taxes, is not over by 10 per cent of the price of the available imported goods.

The Petroleum Operations Regulations also provide that:

> *the procurement of goods and services is made by means of public tender [and] the operator shall give preferential treatment to the purchase of local goods and services when such goods and services are internationally comparable in terms of quality, availability, quantity required, and are offered at prices inclusive of taxes not higher than ten per cent of the available imported goods.*

Examples of other local content provisions can also be found in the Mega Projects legislation, which stipulates that the PPP investment must benefit the Mozambican economy, create jobs for Mozambicans, offer opportunities for technology transfer to locals and help build local small and medium enterprises.

The Public Procurement Law contains nationality criteria to favour local firms since it requires tenders to either restrict participation based on nationality or provide a preferential margin to national bidders or nationally produced goods.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

See question 23.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

The new Petroleum Law seeks to remedy certain loopholes in the previous legal regime, in particular, concerning the restrictions on transfers of interests in oil and gas concessions.

Under the previous legal regime, the government's consent was only required for transfers of interests in petroleum concessions by the concession holder and not in the case of a change of control of the concession holder. The new Petroleum Law now clearly states that any change of control of a concession holder also requires the government's prior consent. In the context of a project financing, the lenders may wish to have the government agree in a direct agreement to certain objective criteria relating to the identity of a transferee which, if satisfied, would constitute consent of the government. Such objective criteria could relate to technical competence, financial capability, upstream, LNG ownership and operations.

From our experience, normally concession contracts contain a clause stipulating that every person who constitutes the concessionaire may assign to another person its rights and obligations or an undivided proportionate part, including direct and indirect transfers of interest or participation under a concession contract, such as assignment of shareholdings or any legal instrument that provides or may provide decisive control over a person constituting the concessionaire or its participating interest under a concession contract.

Such assignment shall require the prior written consent of the Minister of Mineral Resources, as per the provisions of the petroleum legislation.

Although the petroleum legislation is silent in respect of a change in control, from our experience, any direct disposition of greater than 50 per cent of the legal or beneficial ownership of voting securities of a concessionaire, by way of a sale, voting trust or otherwise, that results in a transfer of the effective control of the concessionaire in question, would be deemed a transfer, and, thus, would require the prior approval of the Minister of Mineral Resources.

The law is silent with respect to time frames to obtain the required approval for the above-mentioned transactions; nevertheless, in our experience the approval process tends to be quite simple and rapid as long as all requirements are fulfilled (eg, evidence of the technical and financial capacity of the transferee).

26 Is government consent required for a change of operator?

It is arguably understood that under article 91 of the Regulations on the Petroleum Law, a transfer of rights that may result in a change of operator is subject to obtaining a prior authorisation from the Minister who oversees the petroleum sector. Moreover and according to our experience, concession contracts usually contain a clause stating that 'No change of the operator may take effect unless it has been approved in writing by the Ministry of Mineral Resources and Energy'.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

Yes; the Mozambican parliament recently passed an amendment to the Corporate Income Tax Code, stipulating that sales of Mozambican assets held by non-resident entities will be taxed at 32 per cent without consideration for the period they were held (this provision was also reflected in the Law 27/2014 of 23 September, which establishes the specific regime of fiscal benefits and taxation for petroleum operations).

This amendment provides that, regardless of the place where the transaction took place, the proceeds obtained from the assignment, directly or indirectly, paid or free of charge, between non-resident entities, of shares or other participating interests or rights, involving assets located In Mozambican territory, are considered to be obtained in Mozambique and, hence, are subject to the tax rate above mentioned.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

Ministerial Diploma 272/2009 of 30 December approved the Regulation on the Licensing of Petroleum Activities and Facilities stipulating the need to obtain a licence to proceed with the decommissioning or abandonment of petroleum facilities.

The general principle contained in the Regulation on the Licensing of Petroleum Activities and Facilities and in the Petroleum Operations Regulation is that a detailed decommissioning plan shall be prepared by the concession holder, in consultation with the INP, and submitted no less than two years prior to the date on which production operations are expected to cease, for the approval of the minister with authority over the petroleum industry.

The decommissioning plan shall include, among others, the following items:

- tail-end production schedules and the economic threshold for termination of operations;
- alternatives for continuing petroleum operations;
- information on the further use or subsequent disposal of facilities;
- plans for plugging and abandonment of production wells;
- a schedule for decommissioning activities and a description of the equipment needed for the restoration of land sites or the seabed;
- an inventory of dangerous material and chemicals present in the facilities and plans for their removal; and
- an evaluation of the environmental impact of termination and abandonment activities.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

The Regulations on the Petroleum Law do not specifically refer to securities in respect of future decommissioning liabilities, but rather to a security for the obligations arising out of the concession contract. This payment becomes due one year after the conclusion of the production operations of the concession.

The Regulations on the Mega Projects Law provide for the hand back of the concession, which must be secured by a guarantee in an amount corresponding to 5 per cent of the total investment. This guarantee must remain valid for up to 12 months after the signature of the hand-back term.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The transportation of crude oil and crude oil products is regulated by the Petroleum Law and can be carried out using oil or gas pipelines.

Resolution 14/98, Bilateral Agreement on Carriage of Goods by Road Between Republic of Mozambique and Republic of South Africa, BR No. 17, I Serie, 8 Supplement, 6 May 1998, applies to transporters that wish to undertake the transport by road of goods between any points of the territory of the parties, to any point on the territory of the other party and in transit through the territory of one of the parties; such transporters require a licence from the competent authority of the territory in which the vehicle is registered in accordance with the prescribed rules outlined in Annex A of the Agreement. A competent authority is defined as the National Director of Road Transport (Mozambique) and the National Commission of Transports (South Africa) (article 4). The following are necessary for the transport of goods: a vehicle list of goods as defined in Annex D; customs papers specified by the parties; a load and boarding certificate; and a list of spare parts (article 5).

Also applicable are the rules regarding transportation and supply of crude oils (mineral unrefined petroleum, asphalt and all kinds of hydrocarbons and bitumen, whether solid or liquid, in the natural condition or obtained from condensation or extraction of natural gas, excluding coal or any other substance extracted from coal), by-products (petroleum derivative products) and residues may be classified as transport of liquids in bulk (cistern wagons and cistern trucks) and transport of packed goods (wagons and motor vehicles) under Decree 36 270, Safety Rules for Warehousing and Industrial Treatment of Crude Oils By-products and Residues, BO No. 8, I Serie, 9 May 1947.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

The rights to construct and operate an oil or gas pipeline are granted upon an application addressed to the minister with authority over the petroleum industry.

The transportation of crude oils (mineral unrefined petroleum, asphalt and all kinds of hydrocarbons and bitumen, whether solid or liquid, in the natural condition or obtained from condensation or extraction of natural gas, excluding coal or any other substance extracted from coal), by-products (petroleum derivative products) and residues may be classified as the transport of liquids in bulk (cistern wagons and cistern trucks) and the transport of packed goods (wagons and motor vehicles), and will require approval from the National Director of Road Transport.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

There is a general statutory obligation with respect to the undertaking of petroleum operations that it must be carried out in a prudent manner according to internationally accepted technical and economic practices, health and safety rules, environmental and facilities protection, and rational utilisation of petroleum resources and existing facilities.

With the aim of controlling and reducing the effects of operational and accidental discharges, or of waste handling, and of emissions of pollution to the air, sea, lakes, rivers and earth, it is a duty of the operator to undertake the following actions:

- environmental impact assessments, including actions for minimising the impact on all areas affected by the petroleum operations;
- a record of the environmental aspects influenced by the petroleum operations in all the phases; and
- a system of safety agents and a commission for the working environment should exist in each facility.

The operator is also obliged to prevent accidents and material damages or the threat of damages resulting from its activities and from the working of its facilities to the personnel or goods of a third party; animals; vegetation; marine life; and the sea or air. Operators must also report the quantities of operational and accidental discharges of escapes and waste, and such information should be made known to the INP.

The government body responsible for this is the Ministry of Environment and, in certain aspects, the Ministry of Labour. The Ministry of Environment ensures compliance with all environmental and licensing requirements. The Ministry of Labour undertakes inspections to ensure health and safety measures to protect workers are in place.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

Standards on health, safety and environment for the oil industry are regulated by specific legislation for each area. Notwithstanding this, there are several health, safety and environment requirements applicable to oil and oil product composition, such as:

- environmental impact assessments, including impact reduction measures, shall be carried out in all areas that may be affected by petroleum operations;
- registration of all environmental aspects influenced by the petroleum operations shall be created and maintained for all phases; and
- the operator shall prevent:
  - accidents and material damage resultant from its activities and from the facilities' operation;
  - damage or risk of damage to third parties' personnel and assets;
  - damage to animals, vegetation, marine life and monuments;
  - sea pollution and pollution of water fountains discovered in the course of petroleum operations;
  - air pollution; and
  - damage to petroleum reservoirs.

Update and trends

Through Law 27/2014 of 23 September, which establishes the specific regime of fiscal benefits and taxation for petroleum operations and entered into force on 1 January 2015, the government operated a revision of the fiscal regime applicable to the petroleum industry aiming to compile, in a single document and as much as possible, the main fiscal terms for use in future petroleum projects, notably regarding matters such as royalties and corporate income tax.

In the meantime, the INP launched, on 23 October 2014, its fifth oil and gas bidding round. A total of 15 blocks are included comprising some 76,800km^2 of acreage in the offshore Rovuma, offshore Zambezi, offshore Angoche, onshore around the Pande-Temane concession and onshore Palmeira areas. The fifth licensing round is scheduled to close on 30 April 2015.

Lastly, the Petroleum Law entered into force on 18 August 2014 and contains a clause providing that the government is responsible for regulating all matters in the Petroleum Law within 60 days, as of the day of its publication at the Official Gazette. However, the 60 days have already passed and the government has not yet approved the regulations concerning the Petroleum Law. It is expected that this will take place within the coming weeks and that a new Petroleum Operations Regulation will enter into force shortly after.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Decree 63/2011 of 7 December, provides the legal regime and the mechanisms and procedures for the employment of foreign citizens under the Petroleum Law and Mining Law. This legal regime is applicable to all domestic and foreign employers, and all foreign employees working in these sectors, and provides a regime of quotas for the employment of foreign citizens under which employers may employ foreign citizens by simply giving notice of the employment to the Ministry of Labour, or an entity to whom the minister has delegated this competency, within 15 days after the admission of the employee, subject to the following quotas:

- 5 per cent of the total number of employees in large enterprises (an enterprise employing more than 100 employees);
- 8 per cent of the total number of employees in medium-sized enterprises (an enterprise employing more than 10 but not more than 100 employees); and
- 10 per cent of the total number of employees in small enterprises (an enterprise employing up to 10 employees).

If the enterprise has already fulfilled the quotas, it is possible to employ foreign citizens by means of requesting a work authorisation from the Ministry of Labour. In these cases, the admission of the foreign citizen shall only proceed if the employee has the required academic and professional qualifications, and it is proved that there are no nationals with such qualifications.

In petroleum or mining investment projects approved by the government (through the Investment Promotion Centre) that contemplate the employment of foreign citizens in a greater or smaller percentage than those foreseen above, work permits shall not be required, and it shall be sufficient for notice to be given to the Ministry of Labour within 15 days after the foreign citizen enters into Mozambique.

The law also provides for short-term work, which is considered to be work performed by a foreign citizen that does not exceed 180 days a year, continuous or interrupted.

Short-term work does not require any work authorisation, it being only necessary to remit, within 15 days following the arrival of the foreign citizen to the country, a communication to the Ministry of Labour mentioning, inter alia, the identity of the employee, his or her qualifications, a reason for hiring him or her, the activities that will be performed and dates when he or she will be in the country.

In summary, the quota regime establishes limitations for the hiring of foreign citizens in favour of the local workforce. The failure to observe this quota regime is punishable by suspension of the foreign employee and a fine equivalent to five to ten times the monthly wage of the employee.

Finally, unlike other jurisdictions, the Mozambican legal system does not require a mandatory training fund for the local workforce.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Under the Petroleum Law, natural and legal persons who are holders of a right to conduct petroleum operations are subject to the payment of the following fiscal impositions, apart from petroleum specific taxes:

- the taxes provided for in the Income Tax Code;
- value added tax and the tax on specific consumption owed on the operations conducted;
- municipal taxes due; and
- other taxes and fees established by law.

Petroleum production tax shall be charged on petroleum produced in Mozambican territory, from the development and production area.

Petroleum production tax is chargeable from the moment at which the petroleum produced is extracted from a petroleum reservoir.

The petroleum production tax rates are 10 per cent for crude oil and 6 per cent for natural gas.

The determination of the petroleum production tax shall be made by the holders of the right to engage in petroleum operations that produce petroleum.

Tax shall be paid using a payment order form, by the taxpayer, at the directorates of the tax areas or at any other entity authorised by law, in the same period of tax determination.

The government body responsible for collection of the taxes is the Tax Authority.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

The matter of fixing the sale price of petroleum products is regulated by the Regulation of Petroleum Operations. However, this does not establish the penalties applicable to non-compliance.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Competition Law regulates matters related with competition under the exercise of economic activities.

Such regime is applicable to all economic activities performed or producing effect in Mozambican territory, as well as to private and public enterprises.

The Competition Law is not applicable, however, to the following:

- collective agreements established or to be established with employees' organisations under the Labour Law;
- practices without a commercial purpose;
- agreements from which international obligations arise without prejudicing the Mozambican economy; and
- situations of necessity for specific protection of an economic sector, benefitting national interests or consumer interest.

The Competition Regulatory Authority (CRA) has the powers and competences of supervision, regulation and sanction, regulated by the Competition Law, as well as on its own CRA's articles.

The prohibition of anti-competition practices as well as the control of concentration of enterprises transactions is exercised by the CRA.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

The law provides a process for granting exemptions to the application of the Anti-competition Law to some agreements, decisions or concerted practices, but since the Competition Regulatory Authority has not yet been created this process is still not applicable.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Mozambique is a signatory to several international treaties related to the oil industry, and under the Constitution of the Republic of Mozambique, all treaties duly signed and ratified by the country are treated as domestic laws.

Mozambique is also a member of some international organisations related to the oil industry, such as the World Petroleum Council, which aims to promote, for the benefit of the public, the sustainable supply and efficient use of oil, gas and other energy resources and the Association for the Extractive Industries Transparency Initiative, which is an international standard for openness around the management of revenues from natural resources.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Mozambican or foreign legal entities that are registered in Mozambique, and who demonstrate that they have the technical capability and adequate financial resources for the effective conduction of petroleum operations may be holders of the right to carry out petroleum operations.

Foreign legal entities which directly or indirectly hold or control legal entities that own rights under a concession contract, shall be established, registered and administered under a transparent jurisdiction.

The applicants for rights regarding petroleum operations, in the form of commercial company, shall, together with the application, deposit a document showing evidence of the incorporation of the company, including the identification of the shareholders and the value of their participations. Mozambican legal entities, as well as foreign legal entities that associate with Mozambican legal entities, shall have a pre-emption right in the granting of concession contracts.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

There are no special rules in this regard. Mozambique does not as yet produce crude oil and there are no cross-border supplies of the product.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Oil production has taken place in Myanmar for more than 1,000 years. The first export was in 1854. The Burmah Oil Company discovered the onshore Yenangyaung oil field in 1887. The oil and gas sector was nationalised in 1962.

At present, there are 19 onshore blocks and three main offshore blocks in production. Outputs from these fields were estimated at approximately 20,000 b/d in 2014. The offshore Yadana (TOTAL, Chevron and PTTEP) and Yetagun (Petronas and PTTEP) natural gas projects began production in 1998 and 2000 respectively under gas sales contracts to the Thai state oil company PTT. Yetagun produces an average of 7,800 b/d of condensate, which are, at present, being sent to Thanlyin Oil Refinery. The offshore Daewoo (Daewoo plus three partners) natural gas project commenced production and sales in 2013 to CNPC. The offshore Zawtika (PTTEP) commenced production and sales in March 2014 to PTT.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Myanmar's energy needs are presently covered by oil, gas and hydro. The country's oil production is approximately 20,000 b/d. However, the present daily consumption of oil is estimated to range between 27,000 and 60,000 b/d. Myanmar is importing more than 70 per cent of its consumption.

In the short term, Myanmar will be increasingly dependent on oil imports. However, once CNPC's refining facilities and pipelines are in place, Myanmar will increasingly rely on crude oil imports to satisfy its domestic needs and may become a net exporter of refined products.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

There are a large number of laws regarding oil-related activities that date back to 1918; these are largely based on British law codes of the pre-independence Indian statutes.

The old petroleum laws deal mainly with rights characterised as concessions. In practice, investors generally enter into production sharing contracts (PSCs), performance compensation contracts, improved petroleum recovery contracts (IPRs), improvement of marginal recovery agreements and reactivation agreements. The terms and conditions of these contracts govern the process as long as they are not contrary to the laws in force.

4 Is there an official, publicly available register for licences and licensees?

Certain information, including names of contractors and maps of exploration blocks, are available on the Ministry of Energy (the MoE) website: www.energy.gov.mm.

5 Describe the general legal system in your country.

Myanmar has an Indian common law legal system, which in 1962 was overridden by a socialist regime. The 2008 Constitution and 2010 general election marked a return to the outdated common law regime. Rule of law, is a current priority with assistance of a number of international institutions.

The entity responsible for investigating corruption is the Anti-Corruption Commission (ACC). It was established in 2014 and is empowered to investigate corruption, prosecute offences and take other enforcement measures. The law regulating anti-corruption in Myanmar is the Anti-Corruption Law, Law No. 23/2013 (the Anti-Corruption Law). There were limited prosecutions for bribery prior to its enactment, but we understand there have been a number of successful prosecutions under the Anti-Corruption Law in recent months.

The Anti Money Laundering Law of 2014, Law No.11/2014 (the Anti-Money Laundering Law) covers money laundering and imposes reporting obligations on financial institutions and certain 'non-financial enterprises and professions' including lawyers, accountants and various government entities.

Only public sector corruption is prohibited under the Anti-Corruption Law and the Penal Code. Corruption is not regulated in the private sector aside from the money laundering offences contained in the Anti-Money Laundering Law.

The Anti-Corruption Law applies to all persons involved in the corruption of 'persons in authority', namely: public servants, foreign public officers, political post holders and high ranking officials.

The Anti-Corruption Law states that the offer of bribes to and receipt of bribes by a 'person who has political power' carry more severe penalties. Such persons will be defined in notifications issued by the ACC (no such notification has yet been issued).

It is not clear how the ACC's mandate to investigate and prevent corruption interacts with the powers of criminal investigation possessed by the Myanmar police authorities, and whether the Myanmar police force will continue to investigate corruption matters. Given the ACC's limited powers, particularly regarding arrest and detention, it is expected that the Myanmar police will be required to assist the ACC's investigations.

The ACC is a comparatively new institution so it is not possible at this stage to give a view on how well it interacts with overseas regulators.

Myanmar is a party to the UN Convention Against Corruption (Resolution 58/4 of 31 October 2013), pursuant to which it has agreed to cooperate with other countries in addressing anti-corruption issues.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

Present legislation governing oil and gas in Myanmar includes nine principal laws:

- the Oilfields Act 1918;
- the Oilfield Rules 1936;
- the Petroleum Act 1934;
- the Petroleum Rules 1937;
- the Essential Supplies and Services Act 1947;
- the Oilfields (Labour and Welfare) Act 1951;

- the Petroleum Resources (Development Regulation) Act 1957;
- the Law Amending the Petroleum Resources (Development Regulation) Act 1969; and
- the Myanmar Petroleum Concession Rules 1962.

These laws are mostly based upon British legal codes of the pre-independence Indian statutes. Although the terms and conditions of PSCs largely govern exploration and production (E&P) operations, the above-mentioned Oilfields (Labour and Welfare) Act 1951 is of continuing importance to contractors and their service companies. A new petroleum law has been drafted and is under review by the Attorney General's office.

Of equal importance in the oil and gas sector are the State-Owned Economic Enterprises Law (under which the Myanmar Oil and Gas Enterprise (MOGE) is assigned responsibility for the E&P sector under PSCs with private companies), the Foreign Investment Law (FIL), Foreign Investment Rules and MIC Notification 49/2013 (under which permits are granted by the Myanmar Investment Commission (MIC) to approved terms and conditions of draft PSCs).

The old petroleum laws deal mainly with rights characterised as concessions. Although the above-mentioned laws relating to petroleum are still applicable, in practice, investors generally enter into PSCs, Performance Compensation Contracts (PCCs), IPRs, Improvement of Marginal Recovery Agreements and Reactivation Agreements. The terms and conditions of these contracts govern the process as long as they are not contrary to the laws in force.

We understand that a new Petroleum Act is being drafted.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

No. The FIL 2012 includes a prohibition against nationalisation.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The MoE is the primary government agency responsible for the oil and gas sector. Entities within the MoE that are influential in energy projects are:
- the Energy Planning Department (EPD), which is responsible for negotiating PSCs with foreign oil companies); and
- MOGE, which is responsible for E&P of petroleum within Myanmar, and has exclusive rights to carry out all oil and gas operations with private contractors.

MOGE is both a regulator and operator. The MoE and the MIC also have some regulatory roles.

9 What government body maintains oil production, export and import statistics?

The MoE maintains some statistics on oil production, which are presented at workshops from time to time. Some statistics can be found on its website.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

The Constitution of the Republic of the Union of Myanmar, 2008, stipulates that the state is the ultimate owner of all natural resources, whether found above or below the ground, above or below the water, or in the atmosphere.

Similarly to other former British colonies, the land tenure system in Myanmar recognises freehold and leasehold titles. Such title must be registered to be effective, and is subject to reservation, in favour of the government, of all mines, mineral products and buried treasure (Burma Town and Village Lands Act, 1898). The government has the right to expropriate land with appropriate consideration (Land Acquisition Act, 1898). Foreign nationals, or companies with one or more shares owned by foreign nationals, are barred from acquiring land (or any interest in land) by way of a transfer, grant, lease or mortgage, except with government permission (Transfer of Immoveable Property Restrictions Law, 1987). In September 2011, a notification was passed that a company operating under an FIL permit may be granted a 'right to use' government-owned land or private land, but such right does not automatically include the right to sublease the land, so applicants under the FIL should include their specific requirements for the land in their permit application (known as the proposal) before MIC.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Exploration and production of oil is conducted both onshore and offshore. No areas within announced exploration blocks have been designated off-limits to exploration and production.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The MoE is the primary government agency responsible for the oil and gas sector (see question 8 regarding the roles of EPD and MOGE. In most cases since 2011, the awards of blocks have been made by international tender.

On 17 January 2013, MOGE announced a new bidding round for 18 onshore blocks: three IPRs and 15 PSCs. Bidders were required to include a minimum of one Myanmar nationally owned company registered with the EPD. The deadline for filing expressions of interest was 16 March 2013, and 59 bidders were shortlisted. Sixteen onshore blocks were awarded to 10 contractors in October 2013.

On 11 April 2013, MOGE announced a new bid round for shallow water blocks (11 PSCs) and deep water blocks (19 PSCs). Bidders for shallow offshore blocks must include one Myanmar nationally owned company. Bidders for deep offshore blocks may include a Myanmar nationally owned company. The deadline for filing expressions of interest was 14 June 2013, and 61 bidders were shortlisted. Twenty offshore blocks were awarded to 13 contractors in March 2014.

For updates, we recommend monitoring the MoE's website at www.energy.gov.mm.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

All three of the standard PSCs used by the EPD contain state buy-in provisions. For onshore blocks, the standard PSC reserves a 15 per cent undivided interest for MOGE, with the option for the state to increase its share up to a 25 per cent undivided interest in a project. For offshore blocks, MOGE has the right to buy in to the project up to 20 per cent upon a commercial discovery (increasing to 25 per cent if the reserves are greater than 5 TCF).

There are no mandatory carry requirements for the government's interest and the government does not have any right to participate in the operating of a PSC.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

The contractor must pay 12.5 per cent of all available petroleum as a royalty. Aside from royalties and tax, no other payments are due to the government. In the past, mention of tax stabilisation was found in a side letter signed between MOGE and contractors. There is a general stabilisation provision in PSC, in the 2013 rounds.

15 What is the customary duration of oil leases, concessions or licences?

The duration of onshore blocks is as follows:
- preparatory period – six months;
- exploration period – three years plus two years plus one year; and
- production period – 20 years from completion of development.

For shallow offshore blocks the duration is:
- preparatory period – six months;
- study period – 6–12 months;
- exploration period – three years plus two years plus one year; and
- production period – 20 years.

For deep offshore blocks the duration is:
- preparatory period – six months;
- study period – two years;
- exploration period – three years plus two years plus one year; and
- production period – 20 years.

16 For offshore production, how far seaward does the regulatory regime extend?

The regulatory regime extends to the maritime boundaries with Bangladesh, India and Thailand.

The maritime boundary between Bangladesh and Myanmar was settled in March 2012 by the United Nations International Tribunal of the Law of the Sea.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

PSCs govern exploration, development and production of both oil and gas; however, there are different terms for the following zones: onshore blocks, shallow offshore blocks and deep offshore blocks.

Onshore blocks

At present, onshore PSCs in Myanmar share the following features, based on the 2013 onshore model PSC:
- there is a 'preparatory period' of six months, which may be extended, during which EIA, SIA and EMP reports must be prepared and approved;
- management – MOGE is responsible for the management of operations. The contractor is responsible to MOGE for the execution of such operations and the costs thereof;
- exploration period – initial term three years; first extension two years and second extension one year;
- seismic and well commitments – negotiable;
- production period – 20 years from completion of development or according to the sales contract, whichever is longer;
- signature bonus – payment within 30 days of signing the PSC;
- relinquishment – 25 per cent at the end of the initial term; 25 per cent at the end of the first extension;
- royalty – 12.5 per cent of available petroleum;
- cost recovery limit of 50 per cent;
- production split – progressive per rate of production 60 per cent to 90 per cent for crude oil and natural gas;
- production bonus – progressive per rate of production, from US$0.5 million to US$6 million;
- domestic requirements – 20 per cent of crude oil and 25 per cent of natural gas of the contractor's share of profit petroleum to be sold to the domestic market, at 90 per cent of fair market prices;
- training fund – US$25,000 per year during exploration; US$50,000 per year during production;
- research and development fund – 0.5 per cent of the contractor's share of profit petroleum;
- state participation – 15 per cent, with an MOGE option to increase to 25 per cent;
- governing law – Laws of the Republic of the Union of Myanmar;
- arbitration – Myanmar Arbitration Act, 1944;
- EITI implementation; and
- CSR obligations.

Shallow water offshore blocks

The initial exploration period for shallow water offshore blocks is three years and includes seismic and drilling programmes. One two-year extension and one one-year extension may be granted at the contractor's option. The production split ranges from 60 per cent to 90/85 per cent (crude oil) and 65/60 per cent to 90 per cent (natural gas) per cent depending on the rate of production and the depth of the well. The production bonus, based on the rate of production, ranges from US$1 to US$10 million. The cost recovery limit is 50 per cent in water depths of 600 feet or less and 60 per cent for water depths exceeding 600 feet. Arbitration is according to UNCITRAL Arbitration Rules with the venue of Singapore.

Subject to the Standard Terms and Conditions of Shallow Water Blocks issued by the EPD in the 2013 bidding round, the management, production period, signature bonus, relinquishment, royalty rate, domestic requirements, training fund, research and development fund, and governing law are the same as those for onshore blocks.

Deep water offshore blocks

An initial study period for a deep water offshore block is two years, followed by an initial exploration period of three years, which includes seismic and drilling work commitments. One two-year extension and one one-year extension to the exploration period may be granted at the contractor's option (see information regarding shallow water offshore blocks above for additional information). The production split ranges from 60/55 per cent to 85/80 per cent (crude oil) and 60/55 per cent to 90/80 per cent (natural gas) depending on the rate of production and the depth of the well. The production bonus, based on the rate of production, ranges from US$1 to US$10 million. The cost recovery limit is 60 per cent in water depths of 2,000 feet or less, and 70 per cent in water depths exceeding 2,000 feet. Arbitration is according to UNCITRAL Arbitration Rules with the venue of Singapore.

Subject to the Standard Terms and Conditions of Deep Water Blocks issued by the EPD in the 2013 bidding round, the management, production period, signature bonus, relinquishment, royalty rate, domestic requirements, training fund, research and development fund and governing law are the same as those for onshore blocks.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

The State-owned Economic Enterprises Law (the SEE Law) states that the government has the sole right to carry out the exploration, extraction and sale of petroleum and natural gas and the production of its products. However, the government may, in the interest of the state, permit such activities to be carried out jointly between the government, through MOGE and any other organisations. The energy plan recently announced by MOGE includes a push to increase and promote private participation in the oil and gas sector of Myanmar.

In the 2013 tenders for O&G blocks, winning bidders were obligated to register a local subsidiary or branch office, within the six-month preparatory period.

19 What is the legal regime for joint ventures?

Previously, offshore oil exploration and production could be undertaken by a 100 per cent foreign-owned contractor. However, recently, an unwritten policy of the MoE requires that the contractor includes a local joint venture partner holding a minority interest. A list of possible joint venture partners is available. There is no requirement for the local Myanmar partner to take any risk or make any contribution to the costs of exploration or development. In the 2011 bidding round for onshore blocks, the local partners are believed to have a 5 per cent to 10 per cent participation; however, no statistics are available on this point.

The MoE conducted two new bidding rounds in 2013. For more information, see question 12.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

At present, there are no provisions concerning unitisation.

21 Is there any limit on a party's liability under a licence, contract or concession?

No express limit is provided in the model form of PSC.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Parent company guarantees in respect of each company comprising a contractor are required under PSCs. Following the announcement of the 2013 bid rounds, EPD has introduced a requirement for a bank guarantee of 10 per cent of the initial minimum work commitment.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

Myanmar's model PSC (2013) requires contractors to use 25 per cent of their annual budget to procure goods and services either available in Myanmar or rendered by Myanmar nationals. The model contract also contains a general requirement that contractors give preference to Myanmar goods and services when they are available locally and as long as they are of a comparable quality, price and availability.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

PSC in the 2013 bid rounds include specific obligation in several provisions on employment and training of Myanmar citizens, providing industrial training and education of Myanmar nationals selected by MOGE, and giving preference to Myanmar goods and services.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

MOGE retains title to all project assets, including pipelines, but grants the contractor custody and the exclusive right to use those assets. MOGE may only put the project assets to other uses where this will not interfere with the contractor's operations and with the contractor's permission.

The model PSC also contemplates the construction and operation of common facilities (including pipelines) subject to agreement on the construction and operation of such common facilities, investment recovery and charges to be paid.

MOGE and MIC consent is required in order for a company to transfer its interest under a PSC. Consent will take 90 days. The government has no pre-emptive rights.

26 Is government consent required for a change of operator?

MOGE and MIC consent is required for a change of operator.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

Standard PSC terms grant MOGE a share of any capital gains from share transfers at the following rates:

Profit (US$)	MOGE share
<100 million	40 per cent
100-150 million	45 per cent
>150 million	50 per cent

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

At present, there are no laws or regulations governing abandonment and decommissioning. PSCs, in the 2013 bid round include a general obligation to remove equipment and installations in a manner acceptable to MOGE, and to perform necessary site restoration activities in accordance with government rules and international petroleum industry practices to prevent hazards to human life, the property of others and the environment.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

No.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The MoE and the Ministry of Transportation are the regulators of transportation of crude oil.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

The requisites for obtaining licenses for transporting crude oil and crude oil products are:

- a business licence from the Ministry of Energy (via MOGE); and
- licenses from the Ministry of Transportation and Railways for transportation concerning the road transport department, inland waterways department, railways department, etc.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Until 2012, there was no specific law protecting the environment in Myanmar. The 2008 Constitution contains provisions guaranteeing the conservation of natural resources and the prevention of environmental degradation. However, environmental impact assessments are not required for any projects, governmental or private. A number of laws include short provisions prohibiting acts that adversely impact on the environment.

Environmental protection generally falls under the aegis of the National Commission for Environmental Affairs (the NCEA). The NCEA formulates the government's environmental policy and sets environmental standards. However, significant budget and resource constraints have compromised the ability of the NCEA to serve its stated purposes. In addition, lack of legislative attention has resulted in few guidelines and little support for NCEA action.

To the extent that environmental regulations do exist, they are organised by sector, dealing with mines, forestry and fisheries management separately, leaving many gaps in the regulatory regime.

The Environmental Law 2012 was enacted in March 2012. Rules to implement the new Law were announced in 2014.

One of the leading precedents in Myanmar for environmental and social programmes is the 63km Yadana/Yetagun pipeline corridor through which the three natural gas pipelines from Yadana, Yetagun and Zawtika transit to the Thai border for delivery of natural gas to PTT. For further information about this socio-economic programme, see www.cdain.com and www.chevron.com/globalissues/humanrights/myanmar.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The Factories Act (1951) (the Factories Act) and the Oilfields (Labour and Welfare) Act (1951) (the OLWA) are the primary laws governing occupational health and safety in the oil and gas industry. The Factories Act applies to a broader range of workplaces and the OLWA specifically applies to work in oilfields. Employers in the oil and gas sector should be aware of both legislative regimes, as certain segments of their workforce may fall under one of them.

The OLWA specifically regulates the working conditions (including occupational health and safety) of 'oil workers', which the OLWA defines as anyone 'employed either directly or indirectly [...] in any operation for the winning of oil or gas'. However, certain employees, such as clerical staff and any person who falls under the definition of 'workman' in the Factories Act, are excluded.

Update and trends

A number of draft laws are under review including a new Petroleum Law and Investment Law.

A general election is scheduled in November 2015, but is not expected to have negative impacts on the oil and gas industry. There may be uncertainty about the terms on which natural gas produced are sold in the domestic market.

ASEAN integration is due to kick off 31 December 2015. Myanmar is on a slower schedule than six other ASEAN starts to adapt to free trade and services, it is ahead of schedule in a number of sectors.

The OLWA is similar to the Factories Act with respect to mandatory safety precautions, the powers it grants to inspectors, the requirement to report work-related accidents and occupational diseases, restrictions on the employment of minors and the penalties for any violations. It sets out specific requirements, including those regarding the provision of potable drinking water, and sanitary and sufficient washroom facilities. The OLWA also specifies the safeguards required on machinery, precautions regarding fire and dangerous fumes in confined spaces and the provision of protective eyewear when appropriate. The law also sets out restrictions on what jobs women or children can do, and prohibits them from working shifts between 6pm and 6am.

The MoE and MOGE issued an Employment Policy Guide for Myanmar personnel employed by foreign oil companies and subcontractors around 1993, which is still in force. The Policy Guide provides a chapter entitled Industrial Safety Measures and Welfare Facilities.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The Factories Act and the OLWA are the primary laws governing occupational health and safety in the oil and gas industry. In addition, the Policy Guide's chapter on Industrial Safety Measures and Welfare Facilities applies (see question 33 for further information).

A company may also use foreign labour for part of its workforce. A company registered under the FIL must use domestic workers for 25 per cent of its skilled workforce during the first year, 50 per cent during the second year and 75 per cent during the third year of operation. Myanmar citizens must undertake all unskilled work.

There are no anti-discrimination requirements. However, additional labour laws are in the pipeline that may include such provisions.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Companies in the oil and gas sector are subject to a 25 per cent tax on profits under the Income Tax Law. There is a five-year tax holiday under the FIL of 2012 (the 2012 FIL), beginning when the commercial production period starts in respect of PSCs approved under the 2012 FIL.

Depreciation may be deducted in calculating a company's income tax liability at the following rates, subject to the applicable cost recovery limit:

Category	Depreciation rate
Plant and machinery, pipelines	5 per cent
Oil rigs, survey equipment	10 per cent
Shaft drilling equipment	20 per cent

Under the Commercial Tax Law, natural gas and crude petroleum are not taxed when sold.

Customs duties vary depending on the customs classification of the goods. Companies with projects approved under the FIL may receive either an exemption or relief from customs duty as an investment incentive.

Myanmar's foreign exchange regime is currently undergoing rapid change. Until 2012, the Foreign Exchange Regulation Act 1947 prohibited the buying, borrowing, selling or lending of foreign exchange by any person other than a licensed dealer. Until April 2012, the Myanmar Central Bank had maintained a fixed exchange rate of between 5.5 to 6 kyat to 1 US dollar. The government also issued foreign exchange certificates (FECs) that were supposed to be equivalent in value to 1 US dollar.

In consultation with the IMF, in an effort to reduce the transaction costs associated with multiple exchange rates (caused by informal markets) and to improve the investment environment, the government abandoned its fixed exchange rate policy, and on 1 April 2012 introduced a managed float as part of its effort to unify all the exchange rates between the kyat, the US dollar and FECs. Effective from April 2013, the FEC was phased out.

From April 2014, the government has licensed 10 of the country's 19 private banks to offer foreign currency accounts, seven of which can be used to remit foreign exchange abroad. Some restrictions remain on opening such accounts, including documentation requirements showing that the account holder earns a salary in foreign exchange or a receipt from an official exchange currency centre.

In August 2012, Parliament passed the Foreign Exchange Management Law (2012), paving the way for further liberalisation of foreign exchange restrictions in Myanmar. Investors should monitor the impact of this Law as it is implemented.

Persons who have brought foreign capital into Myanmar under a permit granted pursuant to the present FIL is given more leeway with respect to foreign exchange restrictions. They are allowed to make the following transfers outside the country:

- the person's foreign currency entitlements;
- net profit after deducting all taxes and provisions;
- foreign currency permitted for withdrawal by MIC, which may include the value of assets on the winding up of business; and
- a foreign employee can transfer his or her salary and lawful income after deducting taxes and other living expenses incurred domestically.

According to the Ministry of Finance and Revenue Notification No. 41/2010, March 2010, persons responsible for disbursement of the following types of payments (other than those under the heading of 'salaries') must at the time of payment deduct and remit withholding tax, in the currency in which the disbursement is made, at the following rates:

- interest paid to non-resident foreign nationals – 20 per cent;
- royalties – 15 per cent on payments to residents, 20 per cent on payments to non-resident foreign nationals; and
- payments for the purchase of goods and services in the country – 3 per cent on payments to residents, 3.5 per cent on payments to non-resident foreign nationals.

Myanmar is, at present, a party to 10 double tax treaties with Bangladesh, India, Indonesia, Laos, Malaysia, Singapore, South Korea, Thailand, the United Kingdom and Vietnam. The treaties with Bangladesh and Indonesia are pending ratification.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

There is no mandatory price-setting regime for crude oil or crude oil products.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

On 24 February 2015, Myanmar enacted a Competition Law, which will come into force at a time determined by the President. During the statutory 90-day waiting period, the government should introduce rules to implement the new law. It provides for creation of a new regulatory body.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

Until rules are enacted (see question 37), it is not possible to describe the process or time the process may take.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

During 2012, Australia, Canada, the EU, the UK and the US all relaxed various economic sanctions against Myanmar in light of recent reforms. However, attention must still be paid to the terms of the relaxations of the sanctions, in particular the US prohibition against investments or provision of financial services to persons on the Treasury Department's Specially Designated Nationals and Blocked Persons List, and the new requirement for periodic reporting.

US citizens are required to report on a range of policies and procedures with respect to their investments in Burma, including:

- human, labour and land rights;
- community consultations and stakeholder engagement;
- environmental stewardship;
- anti-corruption arrangements with security service providers;
- risk and impact assessments and mitigation;
- payments to the government; and
- an obligation to notify the Department of State of any investments with MOGE and any contact with the military or non-state armed groups.

Myanmar is a party to the ASEAN Comprehensive Investment Agreement, which provides investment protection to investors from ASEAN states (including protection against expropriation).

See www.state.gov/r/pa/prs/ps/2013/05/209869.htm and General Licence Nos. 17 and 19 for more information.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

The SEE Law states that the government has the sole right to carry out the exploration, extraction and sale of petroleum and natural gas and production of products thereof. However, the government may, in the interest of the state, permit such activities to be carried out jointly between the government and any other organisations.

Under section 20 of the FIL rules, in a joint venture carried out with a citizen in prohibited or restricted sectors, foreign capital should not exceed 80 per cent of the total capital. This ceiling may be amended by MIC by notification, from time to time, with the permission of the government.

In the 2013 tender of onshore and offshore blocks, a number of deep offshore blocks have been awarded to 100 per cent foreign companies. Foreign operators must have a local presence by way of a branch or subsidiary. Foreign non-operators are obligated to have a local presence under 2013 model PSCs.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

At present, Myanmar does not export crude oil or crude oil products. As such, no special rules are in place. Myanmar does export natural gas (Yadana, Yetagun, Zatika and Shine pipelines) under terms of PSCs and GSAs.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The Nigerian oil industry is made up of an upstream sector comprising exploration, drilling, production and transportation of crude oil; and a downstream sector comprising refining, storage, importation, transportation, distribution and marketing of petroleum products. There are seven sedimentary basins: Calabar, Niger Delta, Benue Trough, Lake Chad, Sokoto, Anambra and Dahomey (Benin). Nigeria's oil reserves are largely concentrated in the Niger Delta, which is considered to be one of the world's most prolific oil-bearing sedimentary basins. More prolific reserves have, however, been discovered offshore of the Niger Delta and in the Nigeria–São Tomé and Príncipe joint development zone (JDZ).

Proven oil reserves are approximately 36.2 billion barrels and daily crude production is approximately 2.6 million barrels. Approximately 65 per cent of Nigerian crude oil production is light and sweet. The main export crude blends are Bonny Light (37° API) and Forcados (31° API).

There is considerable government involvement in both the regulatory and commercial aspects of the industry. The right to explore and extract petroleum is granted by the government, from the oil prospecting licence (OPL) to the oil mining lease (OML).

Government participation in the upstream sector is undertaken through the vertically integrated state-owned oil company, the Nigerian National Petroleum Company (NNPC). Unincorporated joint ventures (UJVs) between the NNPC and international oil companies (IOCs) such as Shell, ExxonMobil, ChevronTexaco, Elf and Agip, who act as operators of oil interests, account for the majority of crude oil production. The NNPC has an average of a 60 per cent participating interest in these UJVs, which interest is managed by a subsidiary, the National Petroleum Investment Management Services. The Production Sharing Contract (PSC) is now the preferred mode of conducting petroleum operations, particularly in new acreages. PSCs have been signed with IOCs and international independents such as ConocoPhillips, Addax Petroleum, Shell, ExxonMobil, ChevronTexaco, Elf and Agip. These IOCs are encouraged by the government to partner with indigenous oil companies with a view to building long-term indigenous competencies in the Nigerian oil and gas industry. PSCs exist between the NNPC and NOCs such as Petrobras, CNODC, BG, ONGC and KNOC, as well as several indigenous oil companies. In addition, several sole risk and marginal field licences have been issued to indigenous oil operators.

In order to encourage participation of indigenous oil companies in the Nigerian oil and gas industry, the federal government, in the mid 1990s, developed the contractual relationship involving the grant of marginal fields. The concept of marginal fields in Nigeria refers to an oilfield found in a concession held by an IOC but not containing significant oil discovery and there has been no production in the field for a period of not less than 10 years from the date of its first discovery. These fields, though left unproduced by the IOCs, had the potential of being profitably developed by the indigenous oil companies with fewer overheads than the IOCs. The grant of marginal fields involved a farm-out of these fields by the IOCs to the indigenous oil companies. In accordance with this policy, the federal government amended the primary petroleum legislation in Nigeria to regulate the grant of marginal fields to indigenous oil companies. After the amendment in 2003, the government successfully carried out one round of marginal field awards to about 34 indigenous companies. Recently, the federal government communicated its intention to carry out another bid round, which should be completed in the next few months.

The refining of crude oil for local consumption is meant to be undertaken by the four state-owned refineries, supplied by pipelines from several oilfields. At present, the facilities are operating below capacity. The marketing and distribution of oil products is largely a private sector activity supervised by the Petroleum and Pipelines Marketing Company, a subsidiary of the NNPC.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Approximately 27.2 per cent of Nigeria's energy needs are covered by oil as opposed to other sources of energy.

Approximately 15 per cent of domestic consumption of petroleum products is met by production through local refineries; the remainder is augmented by imports. Initiatives directed to address this shortfall include the deregulation of the downstream petroleum sector, liberalisation of the pricing and importation of refined petroleum products, privatisation of state-owned refineries and licensing of private refineries.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Nigeria's National Oil and Gas Policy was issued in the third quarter of 2007. The policy introduces:

- comprehensive restructuring of the entire petroleum industry;
- harmonisation of existing and proposed petroleum laws;
- sustainable development of the nation's oil resources;
- due consideration for health, safety and environment;
- increase in reserves and daily crude oil production;
- increased local participation;
- enthronement of due process, accountability and transparency in the sector;
- domestication and transfer of petroleum technology;
- development and empowerment of host communities;
- improvement of refining capacity to meet domestic demand for petroleum products; and
- increase in national revenue through the export of refined products.

4 Is there an official, publicly available register for licences and licensees?

There is no publicly available register for petroleum licences. Any person that intends to conduct a search on a petroleum licence or lease will need to apply to the Department of Petroleum Resources (DPR) and make the necessary invoiced payments. Further to such an application, DPR will issue a letter on the status of the licence or lease.

5 Describe the general legal system in your country.

Nigeria is a common law jurisdiction, deriving its law from several sources of law including local statutes and legislation, case law, received English law, customary law, Islamic law and international treaties. The rule of law is generally upheld in Nigeria. This is demonstrated by the ease at which court actions are instituted against the federal government and its agencies, and the resulting judgments for or against the federal government and its agencies.

The enforcement of judgments, domestic judgments and arbitral awards is relatively easy in Nigeria. The Nigerian Arbitration and Conciliation Act of Nigeria provides that arbitral awards are to be recognised as binding irrespective of the country in which they are made. Nigeria has ratified the International Centre for Settlement of Investment Disputes Convention (ICSID) so that any ICSID award can be enforced in Nigeria as if it were an award contained in a final judgment of the Supreme Court.

However, enforcement of foreign judgments and foreign awards are conditioned on recognition and registration of the judgment or award by a Nigerian court. Foreign judgments and awards will only be recognised by a Nigerian court if there is similar or substantial reciprocity of Nigerian judgments in those foreign countries.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The legal framework regulating the oil sector in Nigeria cuts across several pieces of legislation. The root can be traced to the Constitution of the Federal Republic of Nigeria 1999, which vests the entire property and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria, its territorial waters and the Exclusive Economic Zone of Nigeria in the federal government. Some other key legislation governing the oil sector in Nigeria include the following.

The Petroleum Act (Laws of the Federation of Nigeria (LFN) 2004), as amended, is the principal statute regulating the oil industry. The following regulations are issued pursuant to the Act:

- the Crude Oil (Transportation and Shipping) Regulations 1984;
- the Mineral Oils (Safety) Regulations 1963, as amended;
- the Oil and Gas Pipelines Regulations 1995;
- the Petroleum (Drilling and Production) Regulations 1969, as amended;
- the Petroleum (Refining) Regulations 1974;
- the Petroleum Regulations 1967, as amended;
- the Deep Water Allocation to Companies (Back In Rights) Regulations 2003;
- the Oil Prospecting Licences (Conversion to Oil Mining Leases, etc) Regulations 2004; and
- the Marginal Fields Fiscal Regime Regulations 2005.

Other relevant statutes and regulations include:

- the Deep Offshore and Inland Basin Production Sharing Contracts Act, which provides fiscal incentives to oil companies operating in the inland basins and deep offshore areas of Nigeria;
- the Associated Gas Re-injection Act, as amended, which regulates the re-injection of associated gas into oil wells;
- the Land Use Act, which regulates ownership rights and the tenure system of landholding;
- the Employees Compensation Act, 2010;
- the Environmental Impact Assessment Act, which makes the conduct of an environmental impact assessment mandatory prior to the development of any project or activity likely to have a significant effect on the environment;
- the Exclusive Economic Zone Act, which defines the limits of Nigeria's exclusive economic zone;
- the Hydrocarbon Oil Refineries Act, 2004;
- the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007;
- the National Oil Spill Detection and Response Agency Act (NOSDRA), 2004;
- the Nigerian Oil and Gas Industry Content Development Act, 2010;
- the Offshore Oil Revenues (Registration of Grants) Act, which ensures that instruments relating to the grant of any oil lease or licence are registrable in contiguous states;
- the Oil in Navigable Waters Act, which regulates the transportation of crude oil in Nigerian waters and prohibits the release or spillage of oil from any facility into the navigable waters of Nigeria;
- the Oil Pipelines Act, which regulates the construction and operation of oil pipelines;
- the Oil Terminal Dues Act, which regulates the payment of terminal dues on any ship evacuating oil from terminals in Nigeria;
- the Pre-shipment Inspection of Exports Act, which regulates the inspection of oil goods before their shipment to a place outside Nigeria;
- the Petroleum Profits Tax Act, which imposes a tax on profits of companies engaged in upstream oil activities;
- the Companies Income Tax Act, which imposes a tax on profits of companies engaged in downstream oil activities;
- the Education Tax Act, which imposes a 2 per cent tax on the profits of oil companies in Nigeria;
- the Value Added Tax Act, which imposes a tax on consumable goods and services;
- the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria, issued by the Department of Petroleum Resources (DPR), which sets guidelines and standards for environmental quality control, pollution abatement and monitoring procedures in the petroleum industry;
- treaty between Nigeria and São Tomé and Príncipe on the Joint Development of Petroleum and other Resources in areas of the exclusive economic zone of the two states (Ratification and Enforcement) Act 2005;
- the National Office for Technology Acquisition and Promotion Act, which regulates the transfer and acquisition of foreign technology;
- the Petroleum Products Pricing Regulation Agency Act, which sets up the agency that regulates the prices of petroleum products; and
- the Nigerian Oil and Gas Industry Content Development Act 2010, which prescribes minimum Nigerian content for oil companies operating in Nigeria.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

Generally, Nigerian law protects against arbitrary expropriation of individual rights. The Nigerian Constitution, Nigerian Investment and Promotion Commission Act, as well as international treaties, safeguard property and enterprises from compulsory acquisition by the government without compensation.

However, there are legislative provisions that allow for expropriation of a licensee's interest. The Minister may revoke a licence or lease if the licensee or lessee becomes controlled directly or indirectly by a citizen of, or a company incorporated in, any country that does not permit Nigerian citizens or companies to acquire or hold petroleum concessions on terms comparable to the terms upon which concessions are granted in Nigeria.

The Minister may also revoke a licence or a lease if, in his or her opinion, the licensee or lessee:

- is not conducting operations:
  - continuously;
  - in a vigorous and businesslike manner in accordance with the basic work programme approved for the licensee or lessee; and
  - in accordance with good oilfield practice;
- has failed to comply with any provisions of the Petroleum Act or any regulation or direction given thereunder or is not fulfilling his or her obligations under the special conditions of his or her licence or lease;
- fails to pay his or her due rent or royalties, whether or not they have been demanded by the Minister, within the period specified by or in pursuance of the Petroleum Act; or
- has failed to furnish such reports on his or her operations as the Minister may lawfully require.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The Federal Ministry of Petroleum Resources (FMPR) performs statutory oversight roles over the oil sector.

DPR is the regulatory agency of the FMPR. Its functions include monitoring the operations of oil companies, setting and enforcing environmental standards, collection of royalty and rents, supervising and ensuring compliance with oil industry regulations, issuing licences and permits, and ensuring the protection of all oil and gas investments.

The Federal Inland Revenue Service is responsible for matters relating to the taxation of petroleum profits.

The Ministry of Environment, Housing and Urban Development is responsible for evaluating and approving environmental impact assessment reports for projects.

The National Petroleum Investment Management Service is responsible for managing the government's equity in joint ventures between the NNPC and IOCs, and supervises budgets and performances of PSCs and service companies to monitor returns to the federal government.

The Petroleum Products Marketing Company supervises the marketing and distribution of petroleum products.

The Joint Development Authority is responsible for the promotion and supervision of petroleum activities in the Nigeria–São Tomé and Príncipe JDZ.

NESREA is responsible for enforcing all environmental laws, guidelines, policies, standards and regulations in Nigeria, as well as enforcing compliance with provisions of international agreements, protocols, conventions and treaties on the environment to which Nigeria is a signatory.

NOSDRA is responsible for ensuring best oilfield, storage and transmission practices and regulating effective and timely responses to oil pollution.

NIPC is responsible for the promotion and coordination of foreign investments in Nigeria.

The Petroleum Products Pricing Regulation Agency (PPPRA) is responsible for determining the pricing policy of petroleum products and regulating the supply and demand of petroleum products.

The Nigerian Content Development and Monitoring Board guides, monitors and implements the minimum Nigerian content by oil companies.

The Nigerian government maintains an interest in oil ventures through the NNPC. The NNPC is a corporation that, though owned by the federal government, has separate legal personality akin to an incorporated company. Its function is to undertake commercial oil activities on behalf of the government by participating in joint ventures. While being owned by the government, it has no regulatory nor oversight functions.

9 What government body maintains oil production, export and import statistics?

DPR maintains oil production, export and import statistics. The NNPC also maintains an annual statistical bulletin containing data on seismic activities, crude oil production, lifting, allocations and exports.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

The entire property and control of oil in place within any land in Nigeria, under its territorial waters, continental shelf and exclusive economic zone, is vested in the federal government by virtue of the Constitution of Nigeria (1999) and the Petroleum Act.

The Land Use Act vests ownership of lands designated as 'federal land' in the federal government. Lands that are not federal lands are vested in the respective state governments to be held in trust for the benefit of the people. The Land Use Act empowers the government to expropriate lands for 'overriding public purposes', a concept that is defined to include mining or purposes connected with the exploitation of petroleum and laying of pipelines, subject to the payment of compensation to the holder of surface rights.

The title to production from a licence or lease area may pass to a licensee or lessee subject to the nature of the interest granted by the government. Surface rights and subsurface rights, although both conferred on the holder of an OPL or OML, are legally distinct and are regulated by separate authorities.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Oil exploration and production has been mainly onshore within the Niger Delta, although there has been a recent surge in offshore activity.

Typical contractual models for the development of oil resources are joint ventures, service contracts, PSCs and sole risk contracts.

Licensees or lessees may not extend the scope of operations beyond the areas covered by their licences or leases. A licensee or lessee may not enter upon or exercise any rights of control over areas within its licence or lease area, which are held to be sacred, appropriated or dedicated to public purposes. These include areas within a township, village, market or cemetery, or within 50 yards of any building or roads or any part actually under cultivation. Areas bearing protected and productive trees and venerated objects are also protected from oil exploration and production. Permission may, however, be obtained from the Minister of Petroleum Resources (the Minister) to carry out petroleum operations in such off-limit areas.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The Ministry of Petroleum Resources regulates oil exploration and production in Nigeria through DPR, whereas the Nigeria–São Tomé and Príncipe Joint Development Authority regulates the same within the Nigeria–São Tomé and Príncipe JDZ.

The government grants petroleum licences and leases under different contractual structures such as – sole risk, joint venture (all IOCs have a joint venture with the NNPC), PSCs and marginal fields. Licences and leases are usually granted through transparent bidding rounds. Bidding rounds are usually published and successful bidders are selected based on predetermined criteria.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The state reserves the right to participate in the operations of any licence or lease. If a deep water concession is granted with a reservation that the federal government will have a right to participate, the federal government may acquire not more than five-sixths of the allottee's interest. However, where such deep water block is not operated under a production sharing arrangement and each party to the deep water block funds its interest directly, the federal government shall only acquire the five-sixths proportion from the participating interest held by Nigerians in the concession. There are no mandatory carry requirements for any interest acquired by the federal government.

The government, through the NNPC, may participate as an operator of a concession.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Royalties are payable to the federal government in respect of oil produced from a concession. The rates are fixed in accordance with the location of the field such that the deeper the concession is from shore, the lower the rate applicable. Payment may be in foreign currency or, subject to the direction of the Minister, wholly or partly in petroleum.

The royalty rate for onshore production is 20 per cent. The royalty for shallow offshore production from areas up to 100 metres in depth is set at a rate of 18.5 per cent, whereas the royalty rate for production from areas from 101 to 200 metres in depth is 16.5 per cent.

Royalty for production in the deep offshore under a PSC in areas in water depths from 201 to 500 metres is at a rate of 12 per cent. It is 8 per cent for production in areas of water depth from 501 to 800 metres. Areas from 801 to 1,000 meters attract at a rate of 4 per cent, while it is 0 per cent for production in areas of water depth beyond 1,000 metres.

The inland basin has a flat rate of 10 per cent. Royalty rates for production from marginal field operations vary subject to a sliding scale on the volume of production, and range from 2.5 per cent to 18.5 per cent for production below 5,000 barrels per day (bbl/d) to production between 15,000 bbl/d and 25,000 bbl/d.

Aside from taxes, rents are payable on every OPL and OML at the following rates:

- for an OPL – an annual rent of US$10 per km^2 or part thereof shall be required; and
- for an OML – an annual rent of US$20 per km^2 or part thereof shall be required for the first 10 years; thereafter, a rent of US$15 per km^2 or part thereof per annum shall apply until the expiration of the lease, or upon its renewal.

There is no tax stabilisation legislation. Tax stabilisation measures are usually outlined in separate individual agreements between the government and the allottee.

15 What is the customary duration of oil leases, concessions or licences?

An OPL is granted for a period not exceeding five years for onshore joint ventures and PSCs, and shallow offshore PSCs. The duration of an OPL of a PSC in the deep offshore and inland basin depends on the location and depth of the concession, and may range from five to 10 years. The term of an OML is 20 years in respect of joint ventures or PSCs. A holder of an OML who wishes to continue its operations has the option to renew provided all obligations under the expiring OML have been performed.

16 For offshore production, how far seaward does the regulatory regime extend?

The regulatory regime extends to a distance of 200 nautical miles from the baselines, from which the breadth of the territorial waters is measured.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

Aside from applicable tax and royalty rates, there is no difference in the regimes for onshore and offshore petroleum activities. The same regimes also govern the right to explore for or produce different hydrocarbons.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Only companies incorporated in Nigeria may engage in the exploration or production of petroleum. It is necessary to incorporate a local entity, which can be a subsidiary of a foreign company, before engaging in exploration and production of petroleum.

Key requirements in selecting entities to engage in exploration and production activities include:

- evidence of financial capability, technical competence and ability to market oil produced;
- details of the work the applicant is prepared to undertake or a programme for carrying out any minimum work obligations imposed;
- details of the annual expenditure the applicant is prepared to undertake on the acreage applied for; and
- a scheme for the recruitment and training of Nigerians.

19 What is the legal regime for joint ventures?

Joint ventures are regulated mainly by the law of contract and the provisions of the petroleum laws in force.

In addition to the fiscal regime for petroleum operations as contained in the Petroleum Profits Act, commercial aspects of joint venture agreements are covered in the memorandum of understanding signed between the government and some IOCs in 2000, which provides these oil companies with a guaranteed minimum profit of US$2.50 per barrel after tax and a royalty on NNPC equity crude lifted by the company, and substitutes posted prices with realisable prices as a basis for the determination of the fiscal value of crude oil.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Regarding domestic reservoir unitisation, upon application by a licensee or lessee, where the reservoir is capable of being developed as a unit, and it is economically viable and in the interest of Nigeria to do so, the Minister will give notice to the licensees or lessees that an oilfield or reservoir straddling their licence or lease areas will be developed as a unit with the cooperation of all parties.

Failing agreement by the parties on a scheme for unitisation, or non-approval of the scheme by the Minister, the Minister shall prepare a fair and equitable unitisation scheme to be undertaken by the parties.

Cross-border unitisation is subject to international law to be resolved at intergovernmental level. A case in point is the Nigeria–São Tomé and Príncipe JDZ. Under article 31 of the Nigeria–São Tomé and Príncipe JDZ Treaty, the state parties may agree on the exploitation of any reservoir straddling two fields within the zone, and liaise with contractors within the area in question, to give effect to any agreement reached on unitisation.

21 Is there any limit on a party's liability under a licence, contract or concession?

In Nigeria, all parties to OELs, OMLs, PSCs and concessions are jointly and severally liable for any liability arising out of their activities. The International Convention on Civil Liability for Oil Pollution Damage (Ratification and Enforcement) Act specifically states that liability is joint and several. It should be noted that the NNPC Act stipulates that actions against the corporation must be brought within twelve months of the date the cause of action arose. After this time, rights and liabilities will be extinguished. It is important to note this as the NNPC is involved in most of the oil ventures in Nigeria.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Some Nigerian PSCs require the contractor to obtain a performance bond in a stated sum and a parent company guarantee in respect of performance by the contractor of its work obligations. The NNPC will accept a guarantee from the parent company, an affiliate or any other corporate organisation. The parental guarantee is limited to the amount stated in the guarantee document.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

The Nigerian Oil and Gas Industry Content Development Act 2010 (the Local Content Act) prescribes a minimum threshold for the use of local services and materials. All oil and gas sector operators are required to submit a plan showing compliance with the Nigerian content requirements.

The Local Content Act sets up a Nigerian Content and Development Monitoring Board that monitors compliance with the Local Content Act. Compliance with the provisions of the Local Content Act is a major criterion for award of licences, permits and any other interest in bidding for oil exploration, production, transportation and development or any other operations in Nigerian oil and gas industry.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

The key requirements under the Nigerian Oil and Gas Industry Content Development Act 2010 are:

- all regulatory authorities, operators, contractors, subcontractors, alliance partners and other entities involved in any project, operation, activity or transaction in the Nigerian oil and gas industry are required to consider Nigerian content as an important element of their projects;
- independent Nigerian operators shall be given priority in the award of oil blocks, oilfield licences, oil lifting licences and in all projects for which contracts are to be awarded in the Nigerian petroleum industry;
- exclusive consideration will be given to indigenous Nigerian service companies which demonstrate ownership of equipment, Nigerian personnel and capacity to execute work on land and swamp areas;
- international companies working through their Nigerian subsidiaries must demonstrate that a minimum of 50 per cent of the equipment deployed for execution of work is owned by Nigerian subsidiaries;
- where applicable, before carrying out any work or activity in Nigeria, the operator or other body submitting a plan is required to establish a project office in the catchment area where the project is to be located;
- all fabrication and welding works are to be carried out in Nigeria;
- all operators in the oil industry requiring legal services shall retain only the services of a Nigerian legal practitioner or a firm of Nigerian legal practitioners whose office is located in Nigeria except for project management and consultancy services where the minimum Nigerian content shall be 50 per cent of contracts;
- operators, contractors and subcontractors are required to maintain a minimum of 10 per cent of the revenue accruing from their Nigerian operations in Nigerian banks;

- operators shall use Nigerian insurance brokers. However, insurance risks may be placed with a foreign insurance company only with the written approval of the National Insurance Commission;
- an operator or project promoter may retain a maximum of 5 per cent of management positions as expatriate positions;
- there shall be a succession plan which shall provide for Nigerians to understudy each incumbent expatriate for a maximum period of four years. At the end of the four-year period, the position shall become occupied by Nigerians. Additionally, Nigerians are to be given first consideration for employment and training in any project executed by any operator or project promoter in the Nigerian oil and gas industry;
- a tax of 1 per cent of the value of a contract is to be deducted at source and paid into the Nigerian Content Development Fund; and
- all operators or companies are mandated to employ only Nigerians in their junior and intermediate positions or any other corresponding grades designated by the operator or company.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

The consent of the Minister of Petroleum is required before the holder of an interest in an OPL, OML or PSC with the NNPC can transfer its interest to a third party. In practice, a change of control will also require similar approval. An application for approval must be made to the minister by the party to whom the OPL or OML was granted. The proposed transferee will be required to demonstrate evidence of financial and technical capability. Approval is at the minister's discretion. The approval process may take at least three months. There are no pre-emptive rights reserved for the government in the transfer of an OPL, OML or PSC.

26 Is government consent required for a change of operator?

Yes. Consent is required from the Minister of Petroleum.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

A fee of 500,000 naira has to be paid along with the application for transfer to the Minister of Petroleum. In addition, stamp duties are payable on the documents of transfer.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The decommissioning of oil and gas facilities and pipelines are regulated by the provisions of the Petroleum Drilling and Production Regulations, the PSC and the Oil and Gas Pipelines Regulations. The discontinuation or abandonment of a pipeline and oil and gas facilities, must receive the prior approval of DPR. Where an abandoned pipeline is to be removed, the licensee must restore the right-of-way of the pipeline and any disturbed land area in the vicinity of the pipeline to perfect condition. The holder of the OPL or OML is primarily responsible for all decommissioning costs. Under PSCs, the PSC contractor is required to provide a letter of credit or bank guarantee as security for pre-estimated decommissioning costs. Alternatively, the PSC contractor may be required to set aside a decommissioning fund in an interest-bearing escrow account.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

There is no statutory requirement for a licensee to make security deposits in respect of future decommissioning. However a licensee is required to submit a decommissioning programme to DPR. Such programme may contain provision for security deposits for decommissioning and abandonment. In PSCs signed with the NNPC, the contractor is required to set aside a fund for decommissioning and abandonment purposes.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Permits are not required for transportation by road, but DPR calibrates all tanker trucks. Pipeline transportation is regulated by DPR. Marine transportation is regulated by the Nigerian Navy and Nigerian Customs Service, DPR, the Federal Ministry of Transport, the Nigerian Ports Authority, the National Maritime Authority and the National Inland Waterways Authority.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

For pipeline transportation, an application to DPR for a permit to survey the route of the proposed pipeline must be made prior to application for a licence to construct the pipeline. Requirements for marine vessels include security clearance from the Nigerian Navy and the Nigerian Customs Service, certification by Lloyd's of London, the Federal Ministry of Transport or the Nigerian Maritime Authority and fire-fighting certification by the Nigerian Ports Authority.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

HSE regulations in the oil sector are enforced by DPR, the Standards Organisation of Nigeria (SON), NESREA and the Federal Ministry of Environment (FMoE). HSE requirements include the conducting of an environmental impact assessment before the construction or installation of such facility, the design of an environmental management system and the conducting of an annual environmental and safety audit for such facility. Oil facility operations are also expected to conform to standards such as ISO 14,000, OHSAS 1801, the Nigerian Industrial Standards, the Institute of Petroleum Electrical Code, the US National Electrical Safety Code, the American Society of Mechanical Engineers standards and the Factories Act. Records to be kept are as specified by the respective agencies.

HSE regulations are enforced through the issuance of permits and approvals. Regulatory officers may inspect and, where necessary, confiscate or seal up, facilities in breach of HSE regulations. The renewal of HSE permits or approvals is subject to compliance with the terms of the expired permit.

Non-compliance with HSE regulations is an offence and may render the company liable to a fine or loss of its licence and, in the case of individuals, sentencing to a term of imprisonment or payment of a fine, or both.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The production processes must conform to the HSE requirements of DPR, NESREA, FMoE and SON. Oil and the composition of oil products must be of a quality that is safe for human use and, when used properly, must not be harmful to the environment.

Permits are required for the production of oil products. Record-keeping is as specified by the respective agencies.

The regulatory authorities may confiscate offending products, seal up premises, arrest and prosecute offending persons and impose fines. Equally, inspectors may examine premises or equipment and, upon suspicion of non-compliance with HSE requirements, may cause the responsible person to be arrested. Such person shall be liable to a fine or imprisonment, or both, or revocation of the licence or permits.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Standards applicable to oil industry labour include those in the Labour Act, the Factories Act, the Employee's Compensation Act, the Petroleum Act (and its subsidiary legislation), the Pension Reforms Act, the National Minimum Wage Act, the Industrial Training Fund Act as well as those provided by the Ministry of Labour, DPR and the National Wages Board. The Nigerian Oil and Gas Industry Content Development Act was passed to enhance indigenous participation in the oil and gas industry. The Act prescribes the minimum thresholds for the use of local services and materials and promotes the employment of Nigerian staff in the industry. The Act also mandates that Nigerian staff occupy at least 95 per cent of management positions and 100 per cent of the junior and intermediate cadre.

The Industrial Training Fund Act establishes the Industrial Training Fund, which is to be utilised for the promotion of skill acquisition in industry or commerce with a view to generating a pool of indigenously trained manpower. The Act requires all employers having twenty-five or more employees in his or her establishment to contribute 1 per cent of the amount of his or her annual pay roll.

Foreign labour is also regulated and restricted by the Immigration Act and the Immigration (Control of Aliens) Regulations made pursuant thereto. A company wishing to engage foreign nationals is required to obtain an expatriate quota for each prospective employee from the Immigration Department subject to approval from DPR. Foreign nationals seeking employment in Nigeria must apply for, and be granted, residence permits.

The Federal Constitution prohibits discriminatory requirements provided they are not backed by any other statute. Recourse for non-compliance with anti-discrimination standards is to the Labour Act (law of contract and damages).

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The Petroleum Profits Tax Act imposes a tax of 85 per cent on the chargeable profits made from upstream petroleum operations, or a tax of 65.75 per cent during the pre-production period of the company. Profits from upstream petroleum operations in marginal fields are subject to a 55 per cent tax.

The Companies Income Tax Act imposes a tax of 30 per cent on the profits of companies engaged in activities in the downstream oil sector.

In addition, an education tax of 2 per cent is chargeable on the profits of Nigerian companies and a value added tax of 5 per cent is payable on chargeable goods and services. PSCs in the deep offshore and inland basin are taxed at a flat rate of 50 per cent on the chargeable profits. The Federal Board of Inland Revenue administers these taxes.

The Niger-Delta Development Commission (Establishment, etc) Act 2004 also imposes a levy of 3 per cent of the total annual budget of any oil-producing company operating onshore and offshore of the Niger Delta area.

Update and trends

The Petroleum Industry Bill, which is currently before the National Assembly is yet to be passed into law. The bill is intended to consolidate all petroleum regulations and have the effect of revolutionising the oil and gas industry. Although there has been a failure by the incumbent government to pass the bill, resulting in a delay of investment decisions by oil and gas companies, it is expected that the incoming government will make the passage of this bill a priority in its agenda.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Crude oil prices are determined by the international market.

The Petroleum Products Pricing and Regulatory Agency sets petroleum products prices with input from the petroleum products marketers. DPR may revoke the licences of persons selling products above the stipulated price regime.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

Except for the Securities and Exchange Commission, established under the Investment and Securities Act, which has the authority to prohibit any merger, acquisition or business combination it considers likely to cause substantial restraint of competition or to create a monopoly, there is no government body with the authority to prevent or punish anti-competitive practices in the oil industry.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

At present, there is no stipulated process for procuring a government determination of anti-competitive practices in the industry.

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International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

In Nigeria, treaties or multinational agreements are non-binding and remain of persuasive effect until ratified and domesticated as local legislation.

Nigeria has signed several treaties relevant to the oil sector such as:

- the International Convention on Civil Liability for Oil Pollution Damage that prohibits pollution by oil companies in member states territories (ratified);
- the Treaty between Nigeria and the Democratic Republic of São Tomé and Príncipe on the Joint Development of Petroleum and other Resources in Respect of Areas of the Exclusive Economic Zone sets up the Joint Development Zone so both countries can benefit from oil resources therein;
- International Convention on Oil Pollution Preparedness, Response and Cooperation, which seeks to control and minimise the deliberate, negligent or accidental release of oil and other harmful substances from ships into the marine environment;
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage seeks to provide compensation for pollution damage to the extent that the protection afforded by the Civil Liability Convention is inadequate; and
- International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties affirms the right of a coastal state to take such measures on the high seas as may be necessary to prevent, mitigate or eliminate danger to its coastline or related interests from pollution by oil or the threat thereof, following upon a maritime casualty.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Any foreign company intending to conduct business in Nigeria must incorporate an entity in Nigeria and obtain a business permit from the Ministry of the Interior. In addition, the Petroleum Act states that only companies incorporated in Nigeria can apply for the grant of oil licences or leases.

Prior consent of the Minister must be sought and obtained before any interest in a petroleum concession can be transferred to any person.

Pursuant to the federal government policy of encouraging indigenous participation in oilfield activities, locally registered affiliates of IOCs may not acquire more than 40 per cent of the undivided participating interest or working interest in a licence or lease held by an indigenous company. At recent bidding rounds, foreign investors have been obliged to partner with local oil-producing companies as a precondition for being awarded oil concessions.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

The federal government regulates crude oil sales. The seller is obliged to report the sale of any crude oil or crude oil products to DPR.

Norway

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Hydrocarbons have been produced on the Norwegian continental shelf (the NCS) since 1971. According to the Norwegian Petroleum Directorate (the NPD), the total (accumulated) production reached 6.4 billion Sm^3 oil equivalents (OE) as of end of 2014. In 2014, the average daily production of oil from the NCS was approximately 1.51 million barrels (0.24 million Sm^3), while the total production of oil and gas (condensate and NGL included) reached 217 million Sm^3. The NPD's base estimate (31 December 2014) of the remaining recoverable hydrocarbon resources on the NCS is 7.7 billion Sm^3 OE (Barents Sea South-East and the continental shelf around Jan Mayen included). The uncertainty span for the total remaining resources ranges from 5.4 billion Sm^3 OE to 11.3 billion Sm^3 OE. The NPD predicts that production over the next few years will be dominated by fields on stream or under development, with a gradual increase from discoveries where work on development plans is now under way. The NPD estimates that the overall production from the NCS will remain relatively stable in 2015–2016.

Norway is Europe's largest oil producer, the world's third-largest natural gas exporter, and an important supplier of both oil and natural gas to other European countries. The petroleum industry is by far the largest industry in Norway. The surplus created by petroleum income to the state is deposited in the Government Pension Fund. At 17 April 2015, its total value was approximately 7 trillion Norwegian kroner.

The investment level on the NCS has been relatively high during recent years. In 2014, investments in oil and gas activities including pipeline transportation totalled 172 billion kroner. Activity is high, and the NPD reports that 22 new discoveries were made in 2014 while four new fields came on stream.

At the end of 2014, 11 fields were under development on the NCS. It is, however, expected that the recent period's drop in oil prices could lead the industry to implement significant cost cuts, which again in the short term may translate into a lower activity level.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Norway has the world's largest per capita hydropower production, which covers approximately 99 per cent of Norway's total power production. The domestic needs of Norway in terms of energy are hence mainly met by renewable power. The daily oil consumption is very low compared to its oil output potential, and it is unlikely that Norway will need foreign oil supplies to meet domestic needs in the coming decades.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The Norwegian petroleum industry is based on the principles of sustainable development. Taking this into account, the government and the industry itself have a strong focus on enhanced technology, and health, safety and the environment. There is also a strong focus on increased exploration – both in mature and unexplored areas – and increased oil recovery.

4 Is there an official, publicly available register for licences and licensees?

The Norwegian Petroleum Register is the official publicly available register listing all licences and licensees on the NCS. The register is electronic and enables licensees to obtain legal protection when mortgaging their participating interest in a production licence, which is an arrangement of great importance for oil companies with limited financial resources. In respect of registration of mortgages, a fee amounting to 10 times the standard court fee must be paid to the NPD. The standard court fee is 860 kroner. Proof that the fee has been paid should be enclosed with the request for registration. The register is available via the NPD Fact Pages (www.npd.no).

5 Describe the general legal system in your country.

Norway is a civil law jurisdiction and statutory legislation passed by the Norwegian parliament is the main source of law. There are also important fields of law that are not legislated. Notably, tort law and contract law are, to a large extent, made up of non-statutory law.

The Norwegian judiciary branch has three tiers: the district courts (66); the appeal courts (six); and the Supreme Court. Unlike many other jurisdictions, the district courts have jurisdiction over all cases. Hence, there is no division of ordinary courts and administrative courts, criminal courts and civil courts, or a separate constitutional court. Civil and criminal cases can be appealed to the appeal courts. Appeal to the Supreme Court is highly restricted. It is, further, recognised that the fact that courts create law, and case-law, in particular from the Supreme Court, is highly important when a specific legal question is assessed.

Norwegian contract law has a different approach to interpretation of contracts than, for instance, English law. Norwegian law prescribes, as a main rule, that a contract obligation shall be interpreted in accordance with the common intentions of the parties at the time the contract was entered into. When a party is claiming a specific understanding, all circumstances related to the contract are relevant and can be invoked in support of this understanding. If no common understanding can be established, the meaning will be established through an interpretation of the contract where the starting point is the wording. Any other circumstances related to the contract are also relevant in the interpretation, and their weight will be determined on a case-by-case basis. Although the above characteristics remain as the basic starting point of construction of contracts under Norwegian law, it must be pointed out that a series of relatively recent decisions of the Supreme Court suggests that the significance of an objective interpretation on the basis of the contract wording is increasing in Norwegian law, in particular when interpreting contracts between professional parties. Based on this trend in the Supreme Court's approach to the construction of contracts between professional parties, it can be said that Norwegian law is moving towards a more common law approach to interpretation, although Norwegian law does not contain the strict Anglo-American rules prohibiting production of evidence related to the formation of the contract.

Norway is a stable democracy with an independent judiciary system generally considered to be unbiased and fair. Domestic judgments and arbitral awards are easily enforced. Norway is a member state of the

Lugano Convention, ensuring the enforcement of judgments in the EU and EEA area. Further, Norway is also a member state of the New York Convention, ensuring the enforcement of foreign arbitral awards.

The Norwegian legislation against corruption is among the strictest in the world. The Norwegian General Civil Penal Code contains provisions applicable to corruption and bribery. The rules apply to public officials as well as private persons. Persons as well as legal entities may be subject to criminal liability. Further, aiding and abetting is subject to the same penalty. Norway has also ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997), the Council of Europe Criminal Law Convention on Corruption (1999), the Council of Europe Civil Law Convention on Corruption (1999) and the United Nations Convention against Corruption (2003).

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The main statute providing the legal framework relevant for petroleum activities on the NCS is the Petroleum Act, which regulates subsea activities and onshore activities that form an integrated part of the offshore petroleum production. Detailed rules and adaptions are set out in the appurtenant Petroleum Regulations of 27 June 1997 No. 653. To date, no onshore exploration and production activities are conducted in Norway.

The petroleum activities on the NCS are regulated by a licencing system administered by the Ministry of Petroleum and Energy (MPE) and the NPD, and there are two distinct licences that may be granted by the MPE: exploration licences and production licences. In addition, a specific licence to install and operate pipelines is also granted by the MPE. The exploration licence is not exclusive, and does not give a preferential right if a subsequent production licence is granted. A production licence is, on the other hand, exclusive, meaning the licensees are given a sole right to conduct surveys, exploration and production within the geographical area defined by the production licence.

The award of a production licence is, pursuant to the Hydrocarbons Licensing Directive (94/22/EC), made on impartial, objective and non-discriminatory criteria whereby the applicant's technical expertise, financial strength, geological understanding and experience on the NCS, or similar areas, will be weighted.

Exploration and production licences are awarded separately, and an exploration licence will not necessarily be awarded prior to a production licence. Exploration licences are granted for a period of three calendar years, unless otherwise specifically stipulated in the licence. Production licences are granted for an initial period of up to 10 years, and if the licence is granted for a shorter period of time, the MPE may subsequently extend the licence period within the 10-year limit. When the licensees have fulfilled the mandatory work obligations set out in the production licence the production licence may be further extended. A possible extension period is, as a general rule, up to 30 years, but may, under specific circumstances, be up to 50 years.

Offshore areas regarded as mature parts of the NCS are subject to a simplified annual licencing round referred to as awards in predefined areas (APA). Areas not regarded as mature are, on the other hand, subject to ordinary licencing rounds, which, traditionally, have been held every second year. Applicants being prequalified as upstream petroleum companies can apply individually or as a group. Companies being awarded a production licence are obliged to enter into a joint venture, which normally is established through a decision made by the MPE at the date the production licence is awarded.

The joint venture is governed by a standard joint operating agreement (JOA) and accounting agreement stipulating detailed rules pertaining to, inter alia, the role of the management committee and the operator, and the licensees' rights and obligations. The award of a production licence is conditional upon the companies' signature to the JOA and the accounting agreement.

If the licensees decide to develop the petroleum deposit, a plan for development and production (PDO) must be submitted to the MPE for their approval, see the Petroleum Act section 4-2. The MPE shall also approve the production schedule stipulated by the licensees.

In addition to ordinary awards, licences on the NCS can also be obtained through transfer of assets. Such transactions require the consent of both the MPE and the Ministry of Finance (the MoF), see the Petroleum Act section 10-12 and the Petroleum Taxation Act of 13 June 1975 No. 35 section 10.

Decisions of subordinate bodies may be appealed to the relevant ministry in charge. Further, decisions made by the ministries as a first instance may be appealed to the King in Council. Administrative decisions may also, to the extent all administrative rights of appeal have been exhausted, be appealed to ordinary courts. In such cases the court may normally only assess the procedure and application of law, not the administrative authority's application of discretion.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

No.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The MPE, together with the MoF, the Ministry of Labour and Social Affairs, the Ministry of Climate and Environment and the Ministry of Trade, Industry and Fisheries, are the main governmental offices responsible for petroleum activities on the NCS.

The MPE has overarching responsibility for managing petroleum resources. It is also responsible for the state-owned companies Petoro AS (Petoro) and Gassco AS. Petoro manages the state's direct financial interest (SDFI) in petroleum activities, and is organised as a private limited company. Petoro is not empowered with any regulatory authority, and conducts activities on the same terms and conditions as the other licensees. The NPD is administratively subordinate to the MPE and plays a key role in the management of petroleum activities.

The MoF has overall responsibility for ensuring that the state collects taxes and fees (corporate tax, special tax, CO_2 tax and NOX tax) from petroleum activities. The Petroleum Taxation Office, which is part of the Norwegian Tax Administration, reports to the MoF. Its primary task is to ensure the correct levying and payment of taxes and fees adopted by the political authorities.

Additional important authorities are the Petroleum Safety Authority (the PSA), which sits under the Ministry of Labour and Social Affairs and has regulatory responsibility for technical and operational safety, including emergency preparedness and the working environment in petroleum activities. The Ministry of Climate and Environment and the Environment Agency are responsible for all environmental issues related to petroleum activities, including granting requested permissions to pollute. Finally, the Norwegian Coastal Administration, which sits under the Ministry of Transport and Communication, is responsible for the state's preparedness for oil spills.

9 What government body maintains oil production, export and import statistics?

The NPD maintains and publishes annual statistics for oil production, export and import. In addition, Statistics Norway is responsible for analysing the statistics.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

According to the (offshore) Petroleum Act and the analogous Onshore Petroleum Act of 4 May 1973 No. 21, the Norwegian state has the proprietary right to all offshore and onshore petroleum deposits and the exclusive right to resource management. However, the MPE is empowered to grant licences to explore, produce and extract petroleum. Title to the petroleum passes to the licensees once the petroleum has passed the well head. There is no legal distinction between surface rights and subsurface mineral rights.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Norwegian oil exploration and production is, to date, solely conducted offshore. Prior to opening a new area for petroleum activities, the MPE is responsible for carrying out an impact assessment that, inter alia, shall include a description of the area planned to be opened, a review of the environmental effects of the petroleum activity versus national environmental goals and the assumed impact on employment and commercial activities. At present, certain areas within the Norwegian jurisdiction are off-limits to exploration and production. The situation may, however, change due to future impact assessments and a subsequent decision by the government to open up new areas for petroleum activities.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The governmental bodies responsible for regulating oil activities are described in question 8.

Two distinct licences are granted by the MPE: the exploration licence and the production licence. In addition, a specific licence to install and operate pipelines is also granted by the MPE. The exploration licence is not exclusive, and does not give a preferential right if a production licence is granted at a later stage. A production licence is, on the other hand, exclusive, which implies that it gives the licensee or licensees a sole right to conduct surveys, explore and produce within the geographical area set by the production licence. It should be noted that exploration and production licences are awarded separately, and that an exploration licence will not necessarily be awarded prior to a production licence. In respect of the exploration licence, a fee amounting to 65,000 kroner per calendar year shall be paid in advance of the application. For the handling of an application for a production licence, a fee of 109,000 kroner will apply. For every seismic survey on the NCS, a fee amounting to 33,000 kroner must be paid.

Offshore areas regarded as mature parts of the NCS are subject to a simplified annual licensing round referred to as APAs. Areas not regarded as mature are subject to ordinary licensing rounds, which traditionally have been held every second year. The 23rd licensing round is soon to be announced. Applicants that are prequalified as upstream petroleum companies can apply individually or as a group. Based on the applications submitted, production licences are awarded to a group of companies forming a joint venture on the basis of relevant, objective, non-discriminatory announced criteria. One of the licensees is further appointed as an operator. If the licensees decide to develop the petroleum deposit a PDO must be submitted to the MPE for approval. The MPE shall also approve the production schedule stipulated by the licensees. Additionally, licences can be obtained through a transfer of assets. Such transactions require the consent of both the MPE and the MoF. The licensees obtain ownership in the petroleum produced equal to their relative share in the production licence.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The Norwegian state participates in petroleum activities on the NCS through the SDFI. The participating interest held by the SDFI in production licences, pipelines and specific land-based plants is managed by Petoro. Petoro is a licensee, and participates on equal terms and conditions as all other licensees. Petoro only participates in selected licences, but there are no limitations on the maximum participating interest to be reserved to the SDFI as from the date of award; however, Petoro's share will normally be less than 50 per cent. Petoro does not hold operatorships.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Licensees granted a production licence pay an annual fixed fee known as an 'area fee' to the state, effective from the expiration of the initial period of the production licence, which may be up to 10 years. The fees are as follows:

- for the first year the fee is 34,000 kroner per square kilometre;
- for the second year the fee is 68,000 kroner per square kilometre; and
- 137,000 kroner per square kilometre is the fee for the following years.

Licensees may, however, be exempted from the area fee if a PDO is submitted to the MPE for the period the field is in production.

The Norwegian petroleum tax regime is stable, but no specific tax stabilisation measures have been implemented to prevent onerous taxes being levied in the future.

To date, no onshore exploration and production activities have been conducted in Norway.

15 What is the customary duration of oil leases, concessions or licences?

Exploration licences are granted for a period of three calendar years, unless otherwise specifically stipulated in the licence.

Production licences are granted for an initial period of up to 10 years. If the licence is granted for a shorter period of time, the MPE may subsequently extend the licence period within the 10-year limit. When the licensees have fulfilled the mandatory work obligations (including other applicable obligations) set out in the production licence, they may require the production licence to be extended. The possible extension period is stipulated in the applicable production licence, and shall, as a general rule, be up to 30 years, but may under specific circumstances be up to 50 years.

16 For offshore production, how far seaward does the regulatory regime extend?

For offshore production, the regulatory regime extends to the outer limits of the continental shelf (as defined in the United Nations Convention on the Law of the Sea (UNCLOS)), and may also be extended beyond the outer limits of the continental shelf if established through international law or through bilateral agreements with foreign states. The delimitation of the continental shelf between Norway and the United Kingdom, Russia, Sweden, Denmark, Faroe Islands and Iceland respectively has been mutually agreed in separate agreements, while the delimitation between Norway and Greenland has been settled by the International Court of Justice.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

To date, there has been no onshore exploration or production in Norway. The Petroleum Act, which governs offshore petroleum exploration and production, includes all types of hydrocarbons (ie, crude oil, gas and shale gas).

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Different requirements exist depending on whether an exploration or production licence has been granted. The MPE may grant an exploration licence to a body corporate irrespective of whether the company is domiciled, registered, or both, in Norway. Exploration licences may also be granted to physical persons domiciled in a state within the European Economic Area (the EEA). Production licences may, as a starting point, only be granted to a body corporate established in conformity with Norwegian legislation and registered in the Norwegian Register of Business Enterprises. However, pursuant to the EEA Agreement, companies applying for a production licence may also be established in an EEA state. In addition, production licences may be granted to a physical person domiciled in an EEA state. The award of a production licence is based upon the applicant's technical expertise, financial strength, geological understanding and experience on the NCS or similar areas. In the case of a group application (as opposed to an individual application), the composition of the group and the group's collective competence will be evaluated.

19 What is the legal regime for joint ventures?

Companies acquiring a production licence are obliged to enter into an unincorporated joint venture, which is normally established through a decision made by the MPE at the date of award of a production licence. The joint venture is governed by a joint operating agreement (JOA) and an accounting agreement that stipulates detailed rules pertaining to, inter alia, the role of the management committee and the operator, and the licensees' rights and obligations. The JOA and accounting agreement are standard agreements that are negotiated between the MPE and the Norwegian Oil and Gas Association as the representative of the industry. The award of a production licence is conditional upon the companies' signature to the JOA and accounting agreement.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

If a petroleum deposit on the NCS extends over more than one block with different licensees, or onto the continental shelf of another state, the licensees shall, pursuant to the Petroleum Act, seek to find a mutual agreement on the most efficient coordination of the relevant activities and apportionment of the petroleum deposits. Similar principles shall apply with regard to trans-boundary petroleum deposits, but any development of such fields is subject to bilateral agreements between Norway and the respective countries. For information purposes, Norway and the United Kingdom have entered into a framework agreement establishing the main principles applicable to development of cross-border reservoirs.

The Norwegian Oil and Gas Association has developed a set of standard terms and conditions that the parties involved may decide to apply in specific unitisation processes on the NCS.

21 Is there any limit on a party's liability under a licence, contract or concession?

Licensees are jointly and severally liable to the state for financial obligations arising out of petroleum activities pursuant to the licence. There is no maximum limit on the party's liability.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

According to the Petroleum Act, the MPE may decide that a licensee shall provide security for fulfilment of the obligations that the licensee has undertaken in relation to the petroleum activities. Traditionally, the MPE has only requested the ultimate parent company of a subsidiary being represented on the NCS to provide such guarantee, meaning that the MPE has not requested stand-alone companies to provide any specific guarantee. The parental guarantee shall be unlimited. There is no general requirement to provide security deposits.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

No.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

Norway is a party to the EEA Agreement which brings together the EU Member States and the three EEA/EFTA States – Iceland, Liechtenstein and Norway, in order to enable the EEA/EFTA states to participate in the EU's internal market.

The legislation on the internal market provides restrictions on the Member States' right to pass legislation implementing local content requirements. The Norwegian Petroleum Act has, however, one provision which has elements of a local content requirement.

The Petroleum Act section 10-2 provides requirements as to the licensee's local organisation and base in Norway. The provision implies that the licensee must have an organisation in Norway, and secondly sets out requirements as to the robustness of such organisation. The requirements are relative to the nature and extent of the petroleum activities, and the obligations placed on the licensee will therefore have to be assessed on a case-by-case basis.

The MPE may grant an exemption from the obligation to maintain an organisation in Norway. Such exemptions are intended used on licensees with assets of limited economical value. With respect to licensees with a larger portfolio of assets on the Norwegian continental shelf it is considered necessary to maintain the obligation to have an organisation in Norway. The decision of whether or not to grant an exemption will depend on a broad assessment where several aspects are relevant.

The provision also empowers the MPE with an explicit right to instruct the licensee to use specific bases (supply, helicopter bases). Resource management and health, safety and environment are explicitly listed as relevant circumstances when making such decision, but also regional- and energy policy objectives are considered to be relevant.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Pursuant to the Petroleum Act, a transfer of assets in production licences is subject to the prior consent of the MPE. The requirement also applies to the purchase of at least one-third of the shares in a company holding a production licence. A correspondent consent related to the tax consequences must, according to the Petroleum Taxation Act, also be obtained from the MoF.

The state has, through the SDFI, a pre-emption right in all production licences being transferred on the NCS. The pre-emption right is exercised through Petoro, and is only exercised in special cases. It is stated in a resolution to the Parliament issued in October 2009 that the pre-emption right has never been exercised, and we have not obtained information indicating a shift in this practice. It should be noted that the pre-emption right does not apply to transactions involving a transfer of shares.

It is difficult to estimate the time frame for obtaining approval from the MPE, as it may vary from one week to many months. Factors that may influence the process are, inter alia, whether the assignee is a company already established on the NCS, the complexity of the transaction and the financial situation of the assignee. The application for approval is free of charge, but if a mortgage in the participating interests being transferred is registered in the Norwegian Petroleum Register, a fee amounting to 10 times the standard court fee must be paid (see further details in question 4).

26 Is government consent required for a change of operator?

According to the Petroleum Act, the MPE's consent is required for any change of operator.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

No.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The main legal framework relating to abandonment and decommissioning of oil and gas facilities and pipelines are the Petroleum Act and the Petroleum Regulations.

The licensees are obliged to submit a decommissioning plan to the MPE prior to the expiry or surrender of a production licence or a specific licence referring to installation and operation of facilities, or alternatively before the use of a facility is permanently terminated. The plan shall contain proposals for continued production or shutdown of production and the disposal of facilities. The MPE renders a final decision relating to the content of, and the time limit for, implementation of the decommissioning plan. The decision shall, inter alia, be based on technical, safety, environmental and economic aspects, as well as with consideration to other users of the sea.

Licensees forming a joint venture are jointly and severally liable for decommissioning costs. If a licence or a participating interest in a licence has been transferred, the assignor shall be liable for financial obligations towards the remaining licensees for the costs of carrying out the disposal.

In addition to national regulations, the decommissioning plan must take into consideration various requirements undertaken in international regulations. This particularly relates to the OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations (OSPAR), the IMO guidelines and UNCLOS.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

As stated in question 22, the MPE may request a parental guarantee, but there is no requirement to obtain a security deposit in respect of future decommissioning liabilities. However, if a licence or a participating interest thereof has been transferred, the assignor shall (inter partes) be liable for financial obligations towards the assignee and the remaining licensees for the costs of carrying out the decision relating to disposal under the Petroleum Act and the Petroleum Regulations. Normally, the assignor will request the assignee to provide a parental or bank guarantee in order to obtain adequate certainty with regard to the assignee's (future) financial capability.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Offshore pipeline transportation of crude oil and other petroleum products is governed by the Petroleum Act and is administered by the MPE. Onshore pipeline transportation is governed by Regulations of 8 June 2009 No. 602 and is administered by the Directorate for Civil Protection and Emergency Planning (the DSB). Norwegian maritime rules – enforced by the Maritime Directorate – apply to transportation of crude oil and crude oil products by marine vessels within Norwegian territorial waters, under the Regulations of 8 December 2009 No. 1481 and the Regulations of 15 December 2009 No. 1543, which are partly based on the international convention SOLAS. The rules of the vessel's flag state apply to transportation outside Norwegian territorial waters. Onshore transportation (ie, transportation by tanker trucks and railroads) is governed by the Regulations on Transport of Hazardous Material of 1 April 2009 No. 384 and is enforced by the Directorate for Civil Protection and Emergency Planning. Such transportation is based on the ADR and RDI international agreements.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

According to the Petroleum Act, a licensee who decides to develop a petroleum deposit shall submit a PDO to the MPE. The MPE's approval of the PDO will normally also contain a permission for the construction, placing, operation and use of offshore and onshore oil pipelines and offshore loading installations. The MPE can, however, also grant a licence to install and operate pipelines and facilities separately. No specific permits are required to conduct the transport of crude oil and refined oil products from the fields to the market. As discussed in question 30, onshore transportation by tanker trucks and railroads must comply with the applicable regulations enforced by the DSB, but no specific permits are required.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

The main health, safety and environment (HSE) requirements applicable to subsea and onshore activities that form an integrated part of the offshore petroleum production are set out in the following five regulations:

- the Framework Regulations of 12 February 2010 No. 158, which set out certain criteria for HSE in petroleum activities (applicable to activities conducted offshore and certain specifically mentioned onshore plants and refineries);
- the Management Regulations of 29 April 2010 No. 611, which set out requirements on the management of HSE issues, including development of objectives and strategies to improve HSE (applicable to activities conducted offshore and certain specifically mentioned onshore plants and refineries);
- the Facilities Regulations 29 April 2010 No. 634, which set out certain criteria when designing offshore facilities used in petroleum activities (applicable to activities conducted offshore);
- the Activities Regulations of 29 April 2010 No. 613, which govern various petroleum activities and set out requirements pertaining to, inter alia, the working environment, prerequisites for start-up and use of facilities, maintenance of the facility, monitoring of the external environment and handling of waste, and emergency preparedness (applicable to activities conducted offshore); and
- the Technical and Operational Regulations of 29 April 2010 No. 612, which set out requirements relating to the development and design of onshore facilities, working environment issues, handling of risks and emergency preparedness (applicable to activities conducted at specifically mentioned onshore plants and refineries).

As a main rule, all mobile offshore facilities are subject to obtaining an acknowledgment of compliance (AOC) prior to the start-up of activities. The AOC is provided by the PSA and expresses the authorities' confidence that petroleum activities can be carried out using the facility within the framework of the regulations. An applicant can either be the owner of the facility or a party that will be in charge of the day-to-day activities of the facility.

The PSA is the administrative body responsible for technical and operational safety, and the working environment related to offshore and onshore activities covered by the Petroleum Act. Said responsibility covers all phases of the relevant activities, including planning and design, construction and operation, and decommissioning and removal. All licensees conducting activities on the NCS shall have a management system that the PSA finds to be in compliance with the HSE regulations, and breach of the applicable regulations may be subject to administrative and criminal sanctions.

Pursuant to the Petroleum Regulations, the licensee shall ensure the safekeeping of materials and documents for as long as it provides necessary information about the petroleum activities.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

Various acts and regulations are applicable to oil and oil product composition. The Environment Agency manages and enforces, among others, the Pollution Control Act of 3 March 1981 No. 6, the Product Control Act of 11 June 1976 No. 79 and the Greenhouse Emission Trading Act of 17 December 2004 No. 99, and is responsible for granting permits, establishing requirements and set emission limits. The overarching goal of these acts is to protect the environment against pollution, including pollution from the petroleum industry. Other important regulations and international agreements are the Registration, Evaluation, Authorisation and Restriction of Chemical Substances (EC/1907/2006), which, inter alia, aims to improve the protection of human health and the environment through better and earlier identification of intrinsic properties of chemical substances (implemented in Norwegian law through Regulations of 30 May 2008 No. 516); and the Strategic Approach to International Chemicals Management, which is a policy framework to foster the sound management of chemicals. This agreement was adopted at the International Conference on Chemicals Management on 6 February 2006.

The Product Control Act specifies that any distributor of consumer products shall be able to provide information needed to specify and trace the origin of such products, which, inter alia, also applies to oil and oil product composition. Such information shall be kept available for control for five years from the end of the year in which the information was received.

Breach of the regulations enforced by the Environment Agency may lead to administrative and criminal sanctions.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The Norwegian Working Environment Act of 17 June 2005 No. 62 (WEA) applies, with a few exceptions, to undertakings that engage employees, including labour within the petroleum industry. Provisions regarding, inter alia, working hours, health and safety issues, entitlement to leave of absence and regulations on termination of employment forms part of the WEA.

Other relevant statutes are the Holiday Act of 29 April 1988 No. 21, the different anti-discrimination acts and the Gender Equality Act of 21 June 2013 No. 59. The Petroleum Act provides additional provisions on safety measures with regard to petroleum activities.

A number of collective agreements (entered into between labour unions and employers, or an employer association) apply to the Norwegian petroleum industry and regulate, inter alia, employees' working hours, working conditions, stipulation of wages and retirement pensions. Certain provisions from the Engineering Industry Agreement (collective bargaining agreement) have been made applicable in the maritime construction industry. The provisions relate to minimum wage, compensation for overtime, working hours, travel, board and lodging expenses and work clothes.

Nordic citizens may work in Norway without needing to obtain a residence permit. EU and EEA citizens have an unrestricted right to work in Norway. There is, however, a requirement to be registered if the stay in Norway exceeds three months, along with certain conditions (eg, the ability to be self-supported). Other foreign employees require a residence permit for work in Norway.

There are no minimum requirements to use local labour in the petroleum industry, and any such requirements would be in violation of the EEA Agreement. However, the Norwegian government and Norwegian-based oil companies promote both education and employment within the petroleum industry, mainly to secure a stable and viable workforce. There is no governmental regulated training fund for the local workforce.

Pursuant to the WEA, all discrimination on the basis of political views, membership of trade unions, part-time employment or age is prohibited. Moreover, discrimination regarding ethnicity, national origin, ancestry, colour, language, religion, belief or gender is prohibited subject to the Ethnicity Anti-Discrimination Act, the Anti-Discrimination and Accessibility Act, the Sexual Orientation Anti-Discrimination Act and the Gender Equality Act.

Employers shall ensure that the WEA provisions are complied with. A proprietor of an undertaking or an employer who wilfully or negligently breaches the provisions pursuant the WEA are liable to a fine, imprisonment for up to three months, or both. The Norwegian Parliament has recently passed an amendment provision extending the length of the imprisonment to up to one year, and up to three years for the most serious breaches (aggravating circumstances). The amendment is still not in force (17 April 2015).

The Norwegian Labour Inspection Authority supervises compliance of the WEA.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Petroleum-related activities on the NCS are governed by the Petroleum Taxation Act. The Act levies a special tax of 51 per cent in addition to the ordinary Norwegian corporate tax rate of 27 per cent. Thus, the marginal tax rate for activities carried out on the NCS is 78 per cent. All exploration costs may be deducted. For production facilities and pipelines, a linear depreciation rate of 16.66 per cent per year is granted. There is a special uplift allowance when calculating the special tax. This uplift equals 5.5 per cent per year over a four-year period on capital investments, in total 22 per cent. Due to a special provision in the Petroleum Taxation Act, companies that are in a loss position can annually claim a cash reimbursement from the state equivalent to the fiscal value (78 per cent) of exploration costs that the company has carried during the income tax year. The Norwegian system also allows pledging and selling of such reimbursement claims against the state. For the purpose of determining the taxable income from sales of crude oil, the Petroleum Taxation Act states that a norm price (set by the Petroleum Price Council) may be used, which will ensure a price that would have been agreed upon between independent parties. The tax authority is the Petroleum Tax Board. The administrative body is the Oil Taxation Office.

The MoF's consent is required for any transfer of a licence or a participating interest in a licence. The MoF's approval will contain conditions to secure a neutral tax effect for the transfer of the licence. In short, this means that the seller is not taxed for any capital gains but the buyer will not get any tax deduction for the purchase price. The MoF may, however, make adjustments to the tax positions of companies involved in the transfer to ensure tax-neutrality.

The Petroleum Taxation Act also has standardised regulations for licence transfers. According to the standard, defined transactions will be accepted by the MoF without a special ruling. One condition is that a description of the licence transfer and its tax consequences is sent to the MoF, with a copy to the Oil Taxation Office.

Other taxes linked to petroleum activities are the CO_2 tax and the area fee. The CO_2 tax rate for 2015 is 1 krone per litre of petroleum (the area fee rates are described in question 14).

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

To calculate the taxable income for oil companies in Norway, the Petroleum Price Council (the Council) sets tax reference prices, also known as norm prices. Determination of norm prices is based on the principle that such price should reflect the price that could have been achieved between independent parties. The procedure for determining norm prices is governed by the Norm Price Regulations. There is no price-setting regime for crude oil products.

The Council arranges meetings with the companies before the final norm price is set, and the companies are thus given an opportunity to express their view prior to the norm price being determined. Companies may also appeal the Council's decision to the MPE. If the Council does not find it reasonable to set norm prices, the actual price achieved will be used as the applicable tax reference price.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Norwegian Competition Law of 5 April 2004 No. 12 is enforced by the Norwegian Competition Authority (the NCA), whose decisions may be appealed to the Ministry of Trade, Industry and Fisheries. If an appeal to the Ministry is unsuccessful, the complainant can bring the case before an ordinary court. Administrative fines are appealed directly to the ordinary court system.

In addition to enforcing the national competition law, the NCA is also empowered to enforce the competition law provisions of the EEA Agreement. However, its powers are subordinated to the powers of EFTA Surveillance Authority (ESA) and the European Commission (EC). Should ESA or the EC initiate the investigation of an infringement of the competition law provisions of the EEA Agreement, the NCA is prohibited from making decisions conflicting with those of the EC or the ESA.

Serious infringements of the Competition Act are considered criminal offences, and Norwegian courts can impose penal sanctions such as imprisonment or fines on individuals, and fines on companies.

Update and trends

New areas for exploration and production

The Ministry of Petroleum and Energy (MPE) has recently awarded interests in 54 new production licences in the annual award in predefined areas. The licences awarded cover the most explored areas on the NCS, and these annual awards have during the past few years contributed to the increasing number of discoveries being exploited through existing processing and transportation systems.

The MPE announced the 23rd licensing round in the end of January 2015. Following the delimitation agreement entered into between Norway and Russia, effective 7 July 2011, the Barents Sea south-east area was opened for exploration and production of oil and gas, and the very first licences in said area are up for award in the 23rd licensing round. The MPE has announced that the government aims to award the new production licences in the first half of 2016. The long-awaited round consists of 57 blocks whereby 34 blocks are located in the formerly disputed area with Russia in the Barents Sea south-east, 20 blocks are located in the other parts of the Barents Sea and three blocks in the Norwegian Sea. The industry is very enthusiastic about this licensing round, and the prospective area in the Barents Sea south-east is expected to contain vast amounts of oil and gas. Since the new area in the south-east of the Barents Sea provides a more challenging environment than mature areas, time restrictions for exploration and drilling, and other necessary precautions, will be implemented.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

Undertakings engaged in economic activity in Norway are responsible for carrying out their own assessment of the compliance of their practices and agreements with competition law. However, concentrations between independent undertakings above certain turnover thresholds must be notified and approved by the NCA under the domestic merger control regime or the EC, pursuant to their competence as defined in article 57 of the EEA Agreement.

The thresholds in the Norwegian Competition Act have recently been significantly raised following an amendment to the Competition Act. Under the new regime, a notification is only required if:

- the combined aggregate turnover of the undertakings concerned in Norway is more than 1 billion kroner (approximately €125 million); and
- at least two undertakings concerned each have a turnover in Norway exceeding 100 million kroner (approximately €12.5 million).

Under the domestic merger control regime, the parties to a concentration above those thresholds are required to submit a merger notification. The NCA may within 25 working days either clear the concentration or initiate a phase II investigation if the NCA finds that the concentration is a cause of concern for competition in the relevant market or markets. In phase II the NCA shall establish whether the concentration should be prohibited, cleared or granted conditional approval subject to remedies. A phase II investigation may last up to 100 working days. However, if the parties have proposed remedial actions, the process can be prolonged with additional 15 working days.

An acquisition of assets in a producing field on the NCS may under certain circumstances be considered as a concentration, and in which case, insofar as stipulated turnover thresholds are met, must be notified to the NCA under the domestic merger regime.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

As a party to the EEA Agreement, Norway is largely affected by legislation enacted by the EU and the EEA. Hence, statutes and regulations on a national level cannot be inconsistent with the rules of, inter alia, non-discrimination and the 'four freedoms' (ie, free movement of goods, capital, services and persons). Two of the most important directives that further elaborate on the basic rules of the EU and EEA, and that have been implemented by Norway, are Directive 94/22/EC (the Hydrocarbons Licensing Directive) and Directive 98/30/EF (the Gas Market Directive), the latter being repealed twice (by 2003/55/EF and 2009/73/EF).

OSPAR and UNCLOS are important international treaties that are both applicable under Norwegian law.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Objective requirements with regard to the place of registration are described in question 18. Further, pursuant to the Petroleum Act, a licensee is as a main rule obliged to have an organisation based in Norway that is capable of handling its petroleum activities on the NCS.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

No.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Portugal is not an oil-producing country and in its history there has yet to be a commercially viable oil discovery or any significant production in its territory (onshore or offshore).

Indeed, despite research and exploration activities, no oil accumulation or reservoir with relevant commercial viability has been discovered, either in its onshore territory or in the offshore waters of its territorial sea and economic exclusive area.

The exploration works done so far were mostly done in shallow offshore and in onshore areas and reached their peak in the 1970s, with a drastic drop in activity in the 1980s and 1990s.

With a clear objective of making the legal framework more attractive, simpler and less cumbersome to private international oil companies possibly interested in investing in oil exploration in Portugal, legislation was enacted in 1994 for upstream activities (Decree-Law 109/94, the Petroleum Law), providing a new regulatory framework for upstream activity that is still in force at present.

The new legislation took some time to attract interest and it was only with advances in seismic and drilling technology in offshore and deep offshore waters that activity picked up again in the 21st century.

In 2007 a total of 12 concession areas for exploration and production were awarded, mostly in the offshore and deep offshore areas, adding to the existing onshore and shallow offshore concessions.

Since then, a number of 2D and 3D seismic expeditions in deep offshore areas have been undertaken but no drilling has yet been done in these areas. Some minor drilling in onshore areas has taken place.

At present, the few companies (approximately eight) that are active in the country are all private, both foreign and Portuguese-based.

In the midstream and downstream areas, the market is much more developed and mature with Portuguese and foreign-based operators involved in refining, distribution and marketing.

It is expected that a new petroleum law or a significant amendment to the existing Petroleum Law may come into effect soon (probably still during 2015).

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

According to the most recent data (for 2013), almost 50 per cent of Portugal's energy needs are covered by oil. Of 21.474 million tonnes of oil equivalent (TOE), 9.293 million TOE directly or indirectly derive from oil, which is particularly significant since Portugal is not an oil-producing country (ie, its energy needs are not covered domestically and thus naturally leads to a high level of energy dependence).

With regard to energy consumption, there is no great difference between the general patterns observed in Portugal and in other European countries: industry and transport represent the bulk of total energy consumption.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Portugal has a specific piece of legislation that governs oil-related activities in the upstream phase (exploration, extraction and production of crude oil), namely the Petroleum Law.

However, since such activity is scarce, with projects not having proceeded further than the exploration phase and the industry not being well developed, the legislation is mostly broad and not very technical.

Possibly by virtue of the scarcity of activity, the technical aspects and standards thus far have not been regulated and are still to be dealt with by specific ministerial regulation.

The Energy and Minerals Directorate (DGEG) which is an administrative branch integrated into the Ministry of the Economy is, in general, entrusted with regulating energy, natural resources and the minerals sector, including mining, hydroeletric, renewables and biofuels.

The Unit for Exploration and Production of Oil Resources (UPEP) integrated in the National Entity for the Fuel Market (ENMC) is entrusted with supervising, promoting, oversight and to some extent regulating the oil and gas exploration and production sector and resources in coordination with the DGEG.

Further, there is a general legal regime that sets forth the principles of the Portuguese petroleum system (Decree-Law 31/2006) and of the activities of storing, transportation, distribution, refining, marketing and organisation of crude oil and oil-refined products and markets.

4 Is there an official, publicly available register for licences and licensees?

The website of the DGEG (www.dgeg.pt) in the area of exploration and production of crude oil (www.dgeg.pt/dpep/pt/info_pt.htm), still to be transferred to the UPEP ENMC site, provides a list of the existing holders of licences and concession rights identifying the respective concession areas and blocks held. No fees are payable to access this information.

The UPEP keeps all files and registries concerning licences, licensees, concession contracts and concessionaires.

5 Describe the general legal system in your country.

Portuguese law is a system based on civil law. The rule of law is generally upheld and no problems or issues of special note exist as to the enforcement of property or contractual rights. Portugal is party to all the major international conventions regarding enforcement of judgments such as the New York Convention on recognition and enforcement of arbitral awards, the Washington Convention for Settlement of Disputes between States and Private Investors as well as, being an EU member state, the EU Brussels Regulation on recognition and enforcement of court judgments and jurisdiction.

Portuguese law on anti-corruption and anti-bribery is aligned with the laws of EU Continental Europe, pursuant to the most recent EU Regulations on the subject. Under the Portuguese Penal Code, companies may be held liable for corruption crimes whenever the advantage (either financial or non-financial) is promised or granted by a person who occupies a management or leadership position, or by a person acting on his or her behalf, in connection with the breach of duties of supervision or control.

Portuguese regulation on anti-corruption provides for the criminalisation the behaviour that, through consent or authorisation, gives or promises to give to a public servant or to a person occupying a political seat financial or non-financial advantages to obtain a certain result, which may consist of a variety of situations, from a business opportunity to the ratification of a contract, etc. This piece of legislation also provides for similar criminalisation whenever the same behaviour occurs in the private sector.

A recommendation to reduce the risk of this type of liability is for companies to create prevention mechanisms and, in that context, to have in place anti-bribery and anti-corruption policies, made in writing, so as to evidence that any potential action of that kind, taken by employees or by any person in a relevant leadership position, is in breach of the company's internal policies.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The key law in the legal framework regulating oil activities on the upstream stage is the Petroleum Act (Decree-Law 109/94 of 26 April), which is complemented by very few regulations and by the contractual discipline of concession agreements.

The Petroleum Law regulates the most important matters including, inter alia, types of grants of rights to explore and produce oil, rights and obligations of licensees and concessionaires, stages of the projects, working plans' obligations, terms, guaranties, procedures, reporting and filing obligations, relinquishment and restitution of areas, powers and rights of the state regarding the concession area, fees, taxes, royalties and tax regime and very few matters dealing with the technical aspects of the activities.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

Only exceptionally, when the public interest so demands, may the state redeem and retrieve the concessions granted, provided that fair compensation is paid to the concessionaires.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

There is no specific, independent or autonomous regulatory agency entrusted with oil regulation and there is no national state oil company with special or privileged rights of participation, regulation, exploration or production of oil.

The UPEP, a part of the ENMC, is entrusted with supervising, promoting, overseeing and to some extent regulating the oil and gas exploration and production sector and its resources.

Regulation and supervision of certain areas in midstream and downstream activities is carried out by other bodies within the Ministry of the Economy.

9 What government body maintains oil production, export and import statistics?

The UPEP, a part of the ENMC, and the National Institute of Statistics are the entities that maintain oil production, export and import statistics.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

As per article 84 of the Portuguese Constitution and article 4 of the Petroleum Law, the mineral reservoirs and hydrocarbon accumulations found in the Portuguese subsoil are part of the public domain (the Portuguese state).

The inland surface rights can be private or public but the sub-soil mineral reservoirs are public and are subject to expropriation and payment of adequate compensation when surface rights are private.

Pursuant to the Montego Bay Convention of 1982, of which Portugal is a party, and to Law 34/2006, Portugal is entitled to explore, on an exclusive basis, all subsoil, natural and economic resources within its continental shelf up to 200 nautical miles off the coast of continental Portugal and insular Portugal (the islands of Madeira and the Azores), comprising its territorial waters (within 12 nautical miles) and its exclusive economic waters (from 12 to 200 nautical miles).

The Portuguese state is also entitled to authorise and regulate the awarding of rights to third parties to carry out exploration activities in those same areas. This is done by way of concessions whereby the state awards to the concessionaires (normally private parties), for a certain term, the right to explore and produce the oil.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

At present, there are nine active concession areas in deep offshore and eight concession areas in shallow offshore and onshore.

There are areas in Portuguese waters reserved for defence and military purposes. There are also reserved and protected environmental areas, mostly inland.

All exploration and production works to be carried out offshore are subject to the jurisdiction and supervision of the UPEP and ENMC on petroleum matters and of the Portuguese Maritime Authority (AMN), which concerns navigation traffic, safety, protection of natural resources, prevention of water pollution, access to and management of the sea waters under Portuguese jurisdiction and of the activities developed therein.

The AMN brings together several ministries and authorities in connection with the different types of economic and public activities that may be carried out in Portuguese waters (including fishing, defence, environment and water regulation).

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The UPEP, a part of the ENMC, regulates oil exploration and production.

There are basically two types of instruments under which oil exploration rights can be granted. Licences of previous assessment only allow the holder to perform preliminary research and obtain geologic samples processing of the existing data, including the data stored in the UPEP archives. These licences are granted for a limited term of six months before any actual contractual rights of exploration and production are awarded.

Concession rights of exploration and production, on the other hand, are awarded by the state to concessionaires for a certain term (normally a total of approximately 30 to 35 years including the exploration phase), and include the right to research, explore and produce oil and, at the same time, the full financial, material and legal burden and risk of the exploration and production. Correspondingly, during the concession period, the concessionaires are entitled to own the oil extracted following commercially successful discoveries.

Not being an oil-producing country, there is naturally no production-sharing agreement regime in force in Portugal and no national oil company holding exclusive or special rights.

Licences of previous assessment may be granted by the state following formal requests addressed by private interested companies that demonstrate adequate technical and financial capability and disclose the objectives to be reached and the means to be applied.

The general rule is that the grant of concession rights of exploration and production must emerge from a procurement procedure under the form of an international public tender (international bid rounds) launched by the Portuguese state.

Exceptionally, concession rights to certain areas may be granted by way of direct negotiation, including areas declared as permanently available, areas that were subject to tender and were left without any interested bidder, areas relinquished by former concessionaires and adjacent areas to existing concession areas where unitisation is justified.

The successful bidders must demonstrate the adequate technical, financial and legal capability to be awarded the contract and the award decision shall also be based on the quantity and regularity of the works programme proposed, as well as the financial participation (counterpart) offered to the state by the bidders.

The award of a concession contract is subject to payment of a fee for entering into the contract that may vary between €10,000 and €50,000.

The participation in a public tender or bid may require payment of deposits or performance bonds.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

No, such rights exist on the part of the government or state oil company as an operator or as a concessionaire.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Royalties on production or extraction of crude oil are due at progressive rates and vary according to quantities and location of production.

For onshore production or production located in inland waters (eg, rivers), the royalties regime is:

- exemption from royalties up to an annual production of 300,000 tons;
- 6 per cent of anything above 300,000 tons up to 500,000 tons of annual production; and
- 9 per cent of anything above 500,000 tons.

For shallow offshore productions (water depths of up to 200 metres):

- exemption from royalties up to an annual production of 500,000 tons; and
- 10 per cent of anything above 500,000 tons.

At present, there is a full exemption from royalties for oil production in deep offshore waters (deeper than 200 metres) regardless of the quantity of oil produced.

Payment of an annual fixed rental fee whose calculation criteria is set forth in a ministerial decree based on the area in square kilometres held by the concessionaires is also due.

Depending on the location and the areas and blocks held, it is also common for concessionaires to agree with the state an additional financial participation (or compensation) to be paid in cash to the state.

This financial compensation is normally of a fixed annual amount during the exploration phase and during the production phase it is a cash value equivalent to a certain percentage of the oil produced, after deduction of the exploration, operational and development costs.

For offshore production, the rates are normally progressive between 2, 5 and 7 per cent, depending on the production quantities.

15 What is the customary duration of oil leases, concessions or licences?

Concessions normally provide for eight years of exploration and another 25 years of development and production, which may be extended for an additional 15 years.

The duration of the exploration phase for deep offshore areas may exceed the eight-year term and normally does not exceed the 11-year term.

16 For offshore production, how far seaward does the regulatory regime extend?

See question 10.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

In general, the structure of the legal regime is the same for onshore and offshore rights.

Where the regime varies between onshore, shallow offshore and deep offshore is in the different rates for calculation of royalties, the duration of exploration or production phases, minimum required drilling obligations and size of areas to be mandatorily relinquished by the concessionaires.

The legal regime for exploration and production of the different hydrocarbons is the same.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Any domestic or international company that demonstrates sufficient technical and financial capability and expertise may perform exploration and production activities, subject to being awarded such rights following the applicable procurement procedures.

Article 20 of the Petroleum Law requires that any foreign company granted exploration and production rights must at least register a branch office in Portugal, the required costs and timing of which are not significant.

19 What is the legal regime for joint ventures?

Portugal has legislation regulating consortia (Decree-Law 281/81), which are contractual joint ventures between companies.

It is possible to set up a consortium regulated by Portuguese law and, for example, having all operational matters governed by the AIPN model of Joint Operating Agreements between companies.

Normally the Portuguese state requires that when a concession is granted to more than one entity there be an external consortium formally set up under Portuguese law, even where the more internal and operational matters between operators and non-operators are regulated by the terms of a joint operating agreement or a joint development agreement.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Domestic unitisation is briefly regulated in article 46 of the Petroleum Law and basically provides the following:

- where the petroleum field extends beyond the concession area but does not reach another concession area, direct negotiation with the state is provided for;
- where the petroleum field extends beyond the concession area and reaches the area or areas of concessionaires, which are not adjacent to such field, a public tender process limited to the affected concessionaires shall be promoted and the area shall be integrated under the terms of the tender; and
- where the petroleum field comprises the concession areas of two or more adjacent areas, the production may be carried out by the concessionaires of the areas where the field extends to, if an agreement is reached between them. If there is no agreement, the government shall decide in favour of the area that is from a technical and economic viewpoint more efficient and shall redeem or rescind the other area against payment of fair compensation to such concessionaire.

There are no specific provisions in Portuguese internal laws regarding cross-border unitisation, and as such they should be dealt with under the umbrella of the international public international conventions of which Portugal and Spain are signatories.

21 Is there any limit on a party's liability under a licence, contract or concession?

This depends on the concession contract's terms and conditions but, normally, no such limitation is provided for under the law nor is any accepted by the state.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

The Petroleum Law (article 74) requires that concessionaires present annually a guarantee of performance of the concession agreements and security for liabilities under the form of an on-first-demand bank guarantee, a deposit in guarantee or an on-first-demand insurance policy of the amount equivalent to 50 per cent of the budgeted works for that year. Whether parental guarantees are required or not shall depend on the concession contract, but there is no specific requirement that these should be provided.

Additionally, the concession agreements normally require that concessionaires have sufficient and adequate insurance coverage with reputed national or international insurance companies for any liabilities that may emerge from the performance of the contractual works and activities.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

No such requirements exist in Portugal.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

No such requirements apply in Portugal

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Pursuant to article 77 of the Petroleum law, all transfers of interest in a concession agreement to third parties require the government's consent. It is also common for the concession agreements to require such approval for all transfers of interest, including those among the members of a consortium who jointly hold the concession rights.

Change of control in the concessionaire or in any company that is party to the consortium holding the concession rights also requires such consent.

The procedure requires that the concessionaire requests in a reasoned application and in writing beforehand the consent of the Minister of the Economy, addressing such a request to the UPEP and presenting any documents that may be required by the government.

It normally takes about 30 days for consent to be obtained and an additional 30 days for the execution of the relevant instruments of assignment and adhesion, although it is not uncommon for these deadlines to not be met by the government.

Transfers of interest are normally subject to payment of a fixed fee that is established by ministerial decree, which varies depending on the contractual stage during which the transfer is made (the normal range is between €5,000 and €50,000).

26 Is government consent required for a change of operator?

It is normal for concession agreements to require the UPEP's consent for a change of operator.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

See question 25.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The abandonment of oil fields and the decommissioning of oil drilling sites (including the definitive termination of research and exploration activities) are very briefly regulated in the Petroleum Law (articles 47 and 48).

The decommissioning of drilling sites requires that a project be submitted for prior approval by the UPEP.

The abandonment of an oil field should be preceded by a request addressed by the concessionaire to the UPEP invoking technical or economic reasons for the lack of its viability, which must be decided by the Minister of the Economy based on the UPEP's grounded opinion. It becomes effective 60 days after the concessionaire is notified of a positive decision taken by the Minister.

Concession agreements normally provide for the joint and several liability of the joint-venture parties for all damages and other consequences caused to the state and third parties from the works performed, the installations and drilling sites created and its decommissioning.

Environmental law (under Decree-Law 147/2008) provide for strict civil liability of the joint venture parties carrying out the oil activities for all environmental damages caused by them, including those arising out of decommissioning. In certain circumstances, criminal liability may also be charged upon them.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

Although not specifically set for decommissioning related liability, the performance guarantee required under article 74 of the Petroleum Law seeks also to cover any liability or damages caused to the state or any third parties from the oil activities, including decommissioning.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Pursuant to the legislation setting out the principles of the Portuguese petroleum system (Decree-Law 31/2006), the free access to the activity of transportation of crude oil and crude oil products is ensured on the basis of transparency, impartiality and without discrimination, provided there is compliance with the applicable national and international regulations.

Maritime and land transportation of crude oil and crude oil products is subject to licensing and is under the supervision of the Ministry of Economy.

The construction, installation and functioning of pipeline structures are also subject to licensing by the same ministry.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

Entities interested in carrying out this activity must apply for a licence to the Ministry of the Economy (addressed to the UPEP) and must demonstrate compliance with several technical and financial requirements set forth in the existing regulations, as required by the DGEG.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Portuguese law is consistent with the requirements set for these fields in the rest of the EU, and most of its internal regulation on these matters derives from EU directives.

This is true of article 70 of the Petroleum Law (basic principles), Decree-Law 324/95, which was enacted in Portugal Directive No. 92/91/CEE regarding the minimum requirements for improving the safety and health protection of workers during drilling activities. It is also important to note Government Decree No. 197/96, which sets forth further health and safety requirements for extracting industries through drilling, in particular offshore installations and drilling zones.

Among other requirements on health and safety, the employer must ensure that workplaces are designed, constructed, equipped, commissioned, operated and maintained so that workers can perform their work without endangering their health and safety and those of others. Indeed, employers must keep an up-to-date health and safety record demonstrating that risks to workers' health and safety in the workplace have been determined and assessed, that adequate measures were taken to meet the requirements of the law and that the design, use and maintenance of the workplace and equipment are safe, and also that appropriate health surveillance was introduced and that each worker was entitled to health surveillance prior to and following the completion of duties.

As for environmental matters, there are several specific requirements that have to be met in order to ensure that the performance of the activity has a minimum impact on the environment. It is particularly relevant to point out that under article 71 of the Petroleum Law, prior to the commencement of the projects, the concessionaires must submit, for the approval of the UPEP, the preventive measures and safety plans (contingency plans) that will be launched in the event of an accident. Moreover, the concessionaires should adopt best practices for minimising the environmental impact, protecting the ecosystem and safeguarding the cultural art.

In this context, it is important to note the project of EU regulation on safety of offshore prospection, exploration and production activities, which is currently under discussion and will likely strengthen even further the existing regulation, in order to prevent future Deepwater-style accidents.

As opposed to health and safety matters, where supervision is almost entirely developed by the Working Conditions Authority (ACT), environmental supervision may be developed by several different entities, although they predominantly fall within the umbrella of the National Environment Agency and thus of the Ministry of Agriculture and Environment, always in coordination with the UPEP.

The infringement of applicable rules may trigger administrative offence procedures, which are promoted by the competent enforcement authorities. Depending on the level of seriousness of the infringement, the authorities may impose penalty fines and other accessory sanctions, including but not limited to the suspension of activity or performance of work at a given drilling site. Some infringements may even involve criminal liability.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

Health, safety and environmental requirements regarding the use of hazardous substances (including oil and oil products composition) are specifically established throughout various types of industry, and their origins are frequently connected with existing EU regulations, such as the REACH Regulation on registration, evaluation and authorisation and restriction of chemicals.

The supervising authorities are the same identified in the previous chapter, although it is important to underline the relevance of the National Authority for Hazardous Waste, whose intervention is particularly relevant since transporting operators of hazardous substances have to keep an updated electronic record of the traffic of said substances.

Operators are liable for the management of hazardous substances, which includes the costs connected with said management, and have to ensure due processing of the hazardous waste and a proper destination of the hazardous substances once they no longer can be used.

Finally, again, the infringement of applicable rules may trigger administrative offence procedures, which are promoted by the competent enforcement authorities. Depending on the level of seriousness of the infringement, the authorities may impose penalty fines and other accessory sanctions, including but not limited to the suspension of activity or performance of work at a given drilling site. Some infringements may even involve criminal liability.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Although there are some relevant collective bargaining agreements applicable in the midstream and downstream areas of the oil industry, the Portuguese Labour Code is the most relevant piece of legislation applicable in the upstream, as there are no specific collective bargaining agreements applicable in this area.

Foreign labour rules may apply to the work performed in Portugal by employees of foreign companies, to the extent the work is performed under a secondment regime and provided that the minimum requirements of Portuguese law on certain aspects are met, such as prohibition of termination of employment contracts without fair cause, maximum working time periods, guaranteed minimum resting periods, holidays, health and safety, equality of treatment and non-discrimination, among other things.

The infringement of applicable rules may trigger administrative offence procedures, which are promoted by ACT. Depending on the level of seriousness of the misconduct, ACT may impose penalty fines and other accessory sanctions, including but not limited to the suspension of activity or performance of work at a given drilling site. In addition, from a strictly labour law point of view, there is no minimum amount of local workforce that should employed, nor there is any training fund for the workforce. However, having a significant amount of expatriate employees might be difficult to implement considering the existing restrictions on applying for a work visa, provided employer or employees, or both, are not EU residents.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Aside from royalties on crude oil production (if and when applicable), concessionaires are taxed for the corporate income they individually generate at the general rates of tax law, as well as other general taxes of the Portuguese tax regime.

The investments made during the exploration phase should be accounted for as intangible assets that are amortisable if and once oil production begins.

An excise tax on energy and petroleum-derived products is levied on the production, transformation, refining and import of several types of fuel and petroleum-refined products and other origins of fuels and is payable at the moment of its consumer market introduction.

There are several different rates, exemptions and suspensions depending on quantities and types of products in question. There are also withholding taxes, namely, on payments of fees for services, royalties or interest to non residents.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Crude oil and oil products are not subject to mandatory price-setting as Portugal has a free market framework.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

In accordance with Law 19/2012 of 8 May 2012 (the Competition Law) the Portuguese Competition Authority (PCA), a statutory body independent from the Portuguese government, is the body responsible for the enforcement of competition law in Portugal and, therefore, for preventing and punishing any anti-competitive or abusive practices in the oil sector in Portugal. As far as the oil sector is concerned, there are no sector regulators with concurrent competition powers in Portugal.

Besides the PCA, there is also a specialist competition court, the Competition, Regulation and Supervision Tribunal, which hears appeals against PCA decisions as well as decisions from other regulatory bodies. Decisions of the Competition, Regulation and Supervision Tribunal are subject to appeal to the higher courts

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

Other than in relation to merger control, it is not possible to obtain a determination from the PCA on whether or not a proposed action or agreement is compatible with Portuguese competition law. Companies are responsible for their own assessment on the compatibility of their activities with competition law, which may in any event be challenged by the PCA or by the courts. Agreements that infringe the statutory prohibition on restrictive agreements provided in article 9 of the Competition Law will be deemed null and void, unless they meet the criteria laid out in article 10 of the same Act or in relevant EU block regulations, in which case they will be legally enforceable.

A concentration meeting the jurisdictional thresholds is subject to mandatory notification under the Portuguese merger control regime, and cannot be implemented before a clearance decision is issued by the PCA. Following the entry into force of the Competition Act, transactions are notifiable to the PCA if in the previous financial year, the combined Portuguese turnover of the parties to the transaction exceeded €100 million (net of directly related taxes) and at least two of the parties had an individual Portuguese turnover exceeding €5 million; or the transaction leads to the acquisition, creation or reinforcement of a market share of 50 per cent or more on the relevant national market; or the transaction leads to the acquisition, creation or reinforcement of a market share of 30 to 50 per cent on the national market and at least two of the parties achieved individually a Portuguese turnover of at least €5 million (net of directly related taxes) in the previous financial year.

The Portuguese merger control regime in the Competition Act is a two-phase process, encompassing an initial investigation (phase 1), which may last up to 30 working days from the date the notification becomes effective, and an in-depth investigation, if the PCA considers the transaction raises serious doubts as to its compatibility with competition rules, which may last up to 90 working days from the date of the notification.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Portugal is subject to EU Directives, such as those on oil rights, public procurement and environmental matters, and is a party to international conventions on the definition of sovereignty rights over waters, continental shelf and their natural resources, such as the United Nations Convention on the Law of the Sea. It is also a party to the OSPAR Convention on Prevention and Elimination of Pollution from Offshore Installations.

Other than that, the regulatory policy and activity is not affected by international treaties or other multinational agreements.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Apart from the obligation that foreign companies that hold concessions have of registering a branch as a minimum requirement, the requirements are the same for domestic and foreign companies and are the ones a company must meet in order to be awarded a concession, to invest or hold oil-related rights.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Except for tax matters, there are no special cross-border regulations on this subject.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The entity Geological Survey of South Africa initiated the original organised search for hydrocarbons in the Republic during the 1940s. The first oil company was established in 1884 for the purpose of, inter alia, the import of refined products. South Africa's state oil company was established in 1965 and was named Soekor (Pty) Ltd (Soekor). The company explored areas of the Karoo, Algoa and Zululand Basins.

In 1967, the Mining Rights Act was introduced and offshore concessions were granted to international companies. These companies included Total, Gulf Oil, Esso, Shell, ARCO, CFP and Superior. The first offshore well was drilled in 1969, and oil and gas were discovered by the Superior Group in the Pletmos Basin.

In 1970, Soekor (together with Rand Mines) extended its exploration activities to the offshore regions of the Republic. However, despite further encouraging discoveries, international companies gradually withdrew pursuant to political sanctions imposed on the country. From the mid-1970s to the late-1980s, Soekor was the only explorer operating in the offshore areas of South Africa. After the elections in 1994, international investors were again invited by means of licensing rounds to participate in the exploration of the seabed in the Republic's exclusive economic zone.

In 2001, a new state oil company, The Petroleum Oil and Gas Corporation of South Africa SOC Ltd (PetroSA), was established by the merger of Soekor and Mossgas.

Between 1981 and 1991, 181 exploration wells were drilled, with the Bredasdorp Basin being the focus of most of the seismic and drilling activities. Since 1980, over 300 appraisal, exploration and production wells have been drilled offshore, and 233,000km2 of 2D seismic data and 10,200km^2 of 3D seismic data have been acquired.

The exploration activities led to the discovery of oil and gas fields and to the commercial production of oil and gas in the Bredasdorp Basin. In the Pletmos Basin, two gas fields and a further six gas discoveries are undeveloped. One oil and several gas discoveries have been made off the West Coast in the Orange Basin. One of these discoveries, the Ibhubesi Gas Field, is currently being appraised and developed by the joint venture in which Sunbird Energy Limited and PetroSA are participants.

South Africa has four conventional refineries and three synfuel plants with an overall refining capacity of 700,000 bbl/d.

South Africa is estimated to have approximately 390 trillion cubic feet of technically recoverable shale gas resources making it the country with the 8th largest shale gas reserves in the world.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

The 2010 South African Energy Synopsis presented by the Department of Energy confirms that South Africa's primary energy source is coal. Coal constitutes 65.7 per cent of the energy supply, followed by crude oil at 21.6 per cent. Renewables and waste make up 7.6 per cent, whereas gas accounts for 2.8 per cent. Nuclear, hydro and geothermal solar constitute the smallest portion at 0.4 per cent, 0.1 per cent and 0.1 per cent respectively. Further, 38 per cent of the liquid fuel demand is met by synthetic fuels produced locally, largely from coal and natural gas, with the remaining 62 per cent from products refined locally from imported crude oil. The Integrated Resource Plan, which focuses on South Africa's future energy needs, suggests that renewable energy, nuclear energy and gas will begin to feature more prominently in South Africa's energy mix.

The Department of Energy has recently expanded its Renewable Energy Independent Power Producers Programme. The expansion aims to increase the number of independent power producers of renewable energy (including wind and solar) in order to increase and supplement the country's energy supply.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The 1998 White Paper on Energy Policy (the White Paper) provided the basis for South Africa's energy sector. The White Paper emphasised the redistribution of resources by creating work and the reallocation of resources by means of, inter alia, the national budget.

The Integrated Resources Plan was published under the Electricity Regulation Act in 2010. Among other factors, it deals with new electricity capacity development in South Africa and will be revised on a continuing basis in accordance with South Africa's energy needs.

4 Is there an official, publicly available register for licences and licensees?

Technical cooperation permits and reconnaissance permits must be recorded at the Mineral and Petroleum Titles Registration Office (MPTO). Exploration and production rights must be registered at the MPTO. The Registrar's records are open to the public.

The public can inspect the records at MPTO and can request copies by submitting a request in terms of the Promotion of Access to Information Act 2 of 2000 (PAIA).

A PAIA request is made by filling out a standard form and submitting it to the information officer of the relevant public body, who then has 30 days to decide on the request. The information officer may refuse the request on a limited number of grounds provided in the Act (none of which would apply to petroleum rights). If the request is refused, the requester has a right of appeal to a court. It is unlikely that the MPTO would be able to legitimately refuse such a request.

5 Describe the general legal system in your country.

South Africa has a common law system rooted in the traditions of English and Roman Dutch law. The rule of law is enshrined in section 1 of the Constitution and is, for the most part, upheld in the conduct of the government and the decisions of the courts.

Property rights are generally well-protected in South Africa. In the new constitutional dispensation they are occasionally subordinated to other norms, although not more so than is generally considered acceptable in a modern democracy. This trend is well illustrated by the overhaul of the minerals and petroleum regime by the enactment of the Mineral and Petroleum Resources Development Act (28 of 2002). This Act dismantled the system of private ownership of minerals and petroleum under the Minerals Act, 50 of 1991 and replaced it with the Minerals and Petroleum Resources Development Act (28 of 2002), which vested all mineral and petroleum resources in the state and empowered the Minister to grant rights to these resources following an application process. Existing title in minerals and petroleum were, however, protected by provision for the conversion of those rights.

Section 25 of the Constitution guarantees property rights, in particular, the right not to be deprived of property except in terms of a law of general application, which may not be arbitrary, and to be paid compensation that is just and equitable when the deprivation amounts to expropriation. In contentious cases, the courts have used the market value of the expropriated property as the point of departure in determining 'just and equitable' compensation is the market value of the expropriated property. If, after consideration of a range of factors listed in section 25 of the Constitution, there is no reason to adjust the market value of the property, this amount will be considered 'just and equitable' and must be awarded to the expropriatee.

The enforcement of arbitral awards in South Africa is relatively uncomplicated. It is possible for an award to be made an order of court, in which case it is enforced in the same way as an ordinary civil judgment. The country is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards meaning that foreign arbitral awards are enforced with relative ease. It was recently confirmed in the Supreme Court of Appeal that South African courts will only interfere with international arbitration awards in instances of gross irregularity. Foreign judgments must be enforced through the South African courts, which will give effect to the judgment, provided that the forum was competent, the judgment is final and conclusive, the enforcement of the judgment is not contrary to South African public policy, the judgment was not obtained by fraudulent means, the judgment does not require the enforcement of a penal or revue law of a foreign state and enforcement is not precluded by the Protection of Business Act, 99 of 1978.

The Prevention and Combating of Corrupt Activities Act 2004 (PACCA) is South Africa's principal anti-corruption legislation. It applies to both the public and private sector. PACCA creates a general offence of 'corruption' that is very broad. It essentially provides that a person or body is guilty of an offence of corruption where the giving or accepting of a gratification, inter alia, amounts to:

- the illegal, dishonest, unauthorised, incomplete or biased exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
- the abuse of a position of authority; or a breach of trust;
- the violation of a legal duty or a set of rules;
- being designed to achieve an unjustified result; or
- any other unauthorised or improper inducement to do or not to do anything.

The Constitution provides that members of the cabinet and deputy ministers must act in accordance with a code of ethics prescribed by national legislation. It also provides that they may not undertake any other paid work, act in any way that is inconsistent with their office, expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests or use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

The Executive Members Ethics Act, 82 of 1998, (the Ethics Act) was promulgated to give effect to section 96 of the Constitution. The Ethics Act requires the President, in consultation with Parliament, to publish a code of ethics to govern the behavior of all national cabinet ministers and deputy ministers. The Executive Ethics Code (the Code), published in July of 2000, elaborates upon the ethical requirements articulated in the Constitution. The Code applies to ministers, deputy ministers and members of provincial executive councils when performing their official duties.

The Public Service Act, 103 of 1994, (Service Act) regulates the ethical duties of the public service. The public service is made up, primarily of those persons employed by national and provincial departments, including the Departments of Energy and Mineral Resources but excludes persons employed by state-owned entities. The Service Act provides that a public servant may not receive, other than his or her official remuneration, any remuneration, allowance or other reward in connection with the performance of his or her work in the public service unless the retention of such remuneration, allowance or reward has been approved by the accounting authority concerned, failing which it shall be paid into the national or provincial revenue fund established in terms of the Constitution, into which all monies received by national or provincial government must be paid. Certain sections of the Service Act will be repealed by the Public Administration Management Act, which has recently been passed into law. The Act aims to tighten up on corruption in various ways. The commencement date of the Act has not yet been determined.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The Mineral and Petroleum Resources Development Act, 28 of 2002 (MPRDA) was enacted on 1 May 2004 as one of the 'legislative measures' mandated in section 24 of the Constitution to ensure the ecologically sustainable development of South Africa's natural resources. The MPRDA repealed the 1991 Minerals Act and replaced a system of private ownership of mineral and petroleum rights with a new dispensation in which the state is owner and custodian of the nation's mineral and petroleum resources.

The Charter for the South Africa Petroleum Liquid Fuels Industry (the Liquid Fuels Charter) was adopted in November 2000. The objective of the Liquid Fuels Charter as set out in the Energy White Paper is to achieve, over a set period of time, a sustainable presence, ownership or control by 'Historically Disadvantaged South Africans' (HDSA) of a quarter of all facets of the liquid fuels industry.

The Mining Titles Registration Act, 16 of 1967 (as amended) regulates the recording of reconnaissance and technical cooperation permits and the registration of exploration and production rights and matters incidental thereto.

The National Environmental Management Act, 107 of 1998, together with a suite of other environmental legislation gave effect to section 24 of the Constitution, which guarantees the right to an environment that is not harmful to health or well-being and the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

The Gas Act, 18 of 2001 commenced on 12 February 2002. The purpose of this act is promote the orderly development of the piped gas industry, to establish a national regulatory framework, to establish a National Gas Regulator as the custodian and enforcer of the national regulatory framework and to provide for matters connected therewith.

The Petroleum Pipelines Act, 60 of 2003 came into force on 1 November 2003. The objectives of this Act are to establish a national regulatory framework for petroleum pipelines, to establish a Petroleum Pipelines Regulatory Authority as the custodian and enforcer of the national regulatory framework and to provide for matters connected therewith.

The Petroleum Products Act, 120 of 1977 commenced on 16 September 1977. The purpose of this Act is to provide for measures in the saving of petroleum products and an economy in the cost of the distribution thereof and for the maintenance and control of a price thereof, for the furnishing of certain information regarding petroleum products and for the rendering of services of a particular kind, or services of a particular standard, in connection with petroleum products, to provide for the licensing of persons involved in the manufacturing and sale of certain petroleum products, to promote the transformation of the South African petroleum and liquid fuels industry, to provide for the promulgation of regulations relating to such licences and to provide for matters incidental thereto.

The Mineral and Petroleum Resources Royalty Act, 28 of 2002 provides for a complex formula in terms whereof royalties are calculated (see question 14).

The tax legislation that covers oil and gas activities is set out in question 35.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

According to South African law, expropriation must be authorised by statute. Any expropriation that is not so authorised will be void. At present, there is no statutory authority for the expropriation of petroleum rights in South Africa. Section 25 of the Constitution guarantees property rights, in particular, the right not to be deprived of property except in terms of a law of general application, which may not be arbitrary, and to be paid compensation that is just and equitable when the deprivation amounts to expropriation. In contentious cases, the courts have used the market value of the expropriated property as the point of departure in determining 'just and equitable' compensation is the market value of the expropriated property. If, after consideration of a range of factors listed in section 25 of the Constitution, there is no reason to adjust the market value of the property, this amount will be considered 'just and equitable' and must be awarded to the expropriatee.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The principal regulatory and oversight bodies responsible for oil activities are the Minister of Mineral Resources (the Minister), the Petroleum Agency of South Africa (Pty) Ltd (the Petroleum Agency), the Minerals and Petroleum Titles Registration Office, the National Energy Regulator of South Africa (NERSA) and the Controller of Petroleum Products (the Controller).

The Minister, who acts as the custodian of South Africa's petroleum resources on behalf of the government, is responsible for regulating and promoting mineral and petroleum development in South Africa. He or she is empowered to grant or refuse applications for reconnaissance permits, technical cooperation permits, exploration rights and production rights, and may initiate 'licensing rounds'.

The Petroleum Agency is responsible for promoting and regulating exploration for, and exploitation and production of, petroleum. In general, it performs an advisory and administrative role that includes receiving, evaluating and making recommendations to the Minister on applications for petroleum rights and permits, and monitoring compliance with such permits and rights.

The National Oil Company PetroSA is separate from the Petroleum Agency and does not have any regulatory functions.

The Minerals and Petroleum Titles Registration Office is responsible for the registration of exploration and production rights, and keeps a record of all reconnaissance and technical cooperation permits.

NERSA regulates and oversees the electricity, piped gas and petroleum pipeline industries.

The Controller is the statutory authority designated in terms of the Petroleum Products Act to issue manufacturing, wholesale, retail and site licences. In addition, the Controller is responsible for investigating offences and gathering information in relation to petroleum products.

The Department of Energy and the International Trade Administration Commission of South Africa (ITAC) issue authorisations and permits, respectively, for the import and export of petroleum products.

9 What government body maintains oil production, export and import statistics?

The Petroleum Agency captures and records all data and information relating to petroleum production. Statistics and trade data are maintained by the South African Revenue Services (Customs and Excise). Statistics South Africa is responsible for the assembly and retention of administrative records and data for statistical purposes.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

The South African legal system distinguishes between surface and subsurface rights. The Minerals Act of 1991 provided that petroleum rights (subsurface rights) may be held privately or by the government. The MPRDA revolutionised the ownership of petroleum rights by expropriating privately held petroleum rights against claims for compensation. This Act further provided that minerals and petroleum are the property of the nation with the government being the custodian thereof.

Petroleum right holders are required to notify and consult with landowners or legal occupiers of the land prior to the conducting of technical cooperation, reconnaissance, exploration or production operations or operations incidental thereto. Prescribed mediation and arbitration procedures must be followed in instances where the landowner or lawful occupier refuses or makes unreasonable demands in return for access to land, or should the landowner or occupier not be found. If the parties fail to reach an agreement, compensation must be determined by arbitration in accordance with the Arbitration Act of 1956 or by a competent court.

The landowner or lawful occupier of land may claim damages from the petroleum right holder should they have suffered or be likely to suffer damage arising from exploration or production activities.

If necessary, the Minister has the power to expropriate land for the purpose of exploration and production in order to achieve the objects of the MPRDA. Thus, should it be necessary, it would be possible for the Minister to expropriate the land in the event of a major disagreement with the landowner.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

At present, a significant number of exploration activities are being conducted onshore and offshore, while production activities predominately take place offshore. The first onshore production right was granted in September 2012.

Special nature reserves, national parks, nature reserves, world heritage sites, marine protected areas, specially protected forest areas, forest nature reserves and forest wilderness areas are off-limits to exploration and production activities. Exploration and production activities are also prohibited in protected environments without the permission of the Minister of mineral resources and the Minister of environmental affairs.

Further, unless the Minister is satisfied that certain conditions are met, no exploration and production may take place on land comprising a residential area, any public road, railway or cemetery, or any land being used for public or government purposes or reserved in terms of any law.

In addition, exploration and production activities may not take place on any land unless that land is appropriately zoned to permit 'mining' in terms of the applicable land use planning legislation.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The Petroleum Agency has been designated to perform certain functions that relate to the promotion, exploration and exploitation of petroleum in South Africa. The applicant for an exploration or production right must submit an application in accordance with the requirements of the MPRDA to the Petroleum Agency and pay the prescribed fee. The Petroleum Agency must, inter alia, accept, evaluate and make recommendations to the Minister regarding applications for reconnaissance permits, technical cooperation permits, exploration rights and production rights. The granting instrument takes the form of an agreement between the petroleum right holder and the government, and sets out the rights and obligations of the parties. The Petroleum Agency may also accept and evaluate bids received in response to licensing rounds. The applicant for an exploration or production right must submit an application in accordance with the requirements of the MPRDA to the Petroleum Agency and pay the prescribed fee. At present, the application fee for an onshore reconnaissance permit and technical cooperation permit is 100 rand (excluding VAT) and 500 rand (exluding VAT) for offshore permits. The exploration fee for onshore exploration right is 500 rand (exluding VAT) and 1,000 rand (exluding VAT) for an offshore exploration. An applicant will have to pay 1,000 rand (exluding VAT) for an onshore production right application and 5,000 rand (exluding VAT) for an offshore production right application. The law does not prescribe a time period within which the government must grant or refuse applications.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

Government participation is not legislated, but is provided for in the standard form of exploration and production rights, which stipulates that the government through an organ of the government (which has been the state oil company PetroSA in the past) has an option to acquire a 10 per cent participating interest in a production right. Neither the law nor the rights provide that the government has a right to participate as the operator of the right. The government is not liable for past expenditure (thus, this is carried through to exploration) but must contribute, in proportion to its participating interest, to production costs incurred subsequent to the acquisition of the interest.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Royalties

The Mineral and Petroleum Resources Royalty Act, 28 of 2008 (the Royalty Act) provides for the imposition of a royalty on the 'transfer' of mineral resources extracted from within South Africa, while the Mineral and Petroleum Resources Royalty (Administration) Act, 29 of 2008 (the Royalty Administration Act) deals with the administration of the royalty.

A person who holds an exploration or production right, or who wins or recovers a mineral resource extracted from within South Africa (an 'extractor'), must in terms of the Royalty Administration Act apply for registration with the commissioner for the South African Revenue Service (SARS). However, holders of exploration or production rights will only become liable to pay royalties if they extract and transfer mineral resources.

Royalties are payable when mineral resources extracted from within South Africa are 'transferred', which includes the disposal or consumption thereof.

The Royalty Act uses two variables to calculate royalty liability: the value of gross sales in respect of the minerals (the tax base) and the royalty percentage rate that is applied to the base. The royalty percentage rate distinguishes between refined and unrefined mineral resources:

- in respect of refined minerals the formula is, at present, 0.5 + [earnings before interest and taxes ÷ (annual gross sales in respect of refined mineral resources × 12.5)] × 100; and
- in respect of unrefined minerals the same formula applies, except that annual gross sales are multiplied by 9.

The maximum royalty percentage is capped at 5 per cent for refined mineral resources and 7 per cent for unrefined mineral resources.

Oil and gas are subject to the refined mineral resources rates, as they are generally sold in its refined form. No distinction is made between onshore and offshore production.

The Royalty Act authorises the Minister of Finance to conclude binding fiscal stability agreements with an extractor in respect of an existing mineral resource right (which includes petroleum rights) or in anticipation of the extractor acquiring a mineral resource right. These agreements offer long-term fiscal stability as they ensure that extractors will not become subject to a royalty that is greater than the royalty to which it would otherwise have been subject. (The Minister of Finance may also enter into a fiscal stability agreement with respect to income tax as regulated by the Tenth Schedule to the Income Tax Act, 58 of 1962 (the ITA), but no provision is made for an overarching agreement to guarantee that no other taxes will be levied in the future.)

The Royalty Act provides for limited exemptions, including:

- a small business exemption for a resident extractor whose gross sales for the year in respect of all mineral resources will not exceed 10 million rand and where the royalty does not exceed 100,000 rand; and
- a sampling exemption in terms whereof an extractor will be exempt from the royalty in respect of mineral resources won or recovered by the extractor for testing, identification, analysis and sampling, provided that the gross sales in respect of those mineral resources do not exceed 100,000 rand during a year of assessment.

Other payments

The MPRDA Regulations prescribe the application fee that is payable when an application for a right of permit is submitted. The prescribed application fee is not refundable. The application fees are prescribed for both onshore and offshore applications.

The holder of an exploration right must pay an annual exploration fee. The amount of the exploration fee is prescribed in the MPRDA Regulations and is calculated by way of a formula that provides that the exploration fee increases annually. Different exploration fees are prescribed for onshore and offshore exploration rights. No bonuses are payable.

15 What is the customary duration of oil leases, concessions or licences?

The oil industry recognises two primary permits and two principal rights that may be applied for.

Reconnaissance permits are valid for a period not exceeding one year and are not renewable or extendable.

Technical cooperation permits are valid for a period not exceeding one year and are not renewable. The holder of a technical cooperation permit has the exclusive right to apply for and be granted an exploration right in respect of the area to which the permit relates. If the holder of a technical cooperation permit has lodged an application for an exploration right, the technical cooperation permit remains in force notwithstanding its expiry date, until such time as the exploration right application is either granted or refused. Technical cooperation permits are neither extendable nor renewable.

Exploration rights may be granted for a period not exceeding three years. The exploration right period can be extended. However, these rights may be renewed for a maximum of three periods, not exceeding two years each. In the event of renewal of an exploration right, relinquishment of a percentage of the exploration area is usually required. Although the relinquishment percentage is not prescribed by legislation, it has become common practice for the relinquishment requirement to take the following form: 20 per cent relinquishment of the exploration area on completion of the initial exploration period; thereafter, not less than a 15 per cent relinquishment of the exploration area on completion of the first renewal period and not less than 15 per cent relinquishment of the exploration area on completion of the second renewal period. Where the holder of an exploration right has lodged an application for renewal, the exploration right remains in force until such time as the renewal application has been granted or refused. It is important to note that exploration rights or an interest therein may be transferred with the consent of the Minister.

Production rights are granted for an initial period not exceeding 30 years. The holder of a production right also has an exclusive right to apply for and be granted a renewal of the right. A production right period cannot be extended but can be renewed for further periods, each of which may not exceed 30 years. The maximum number of renewals permitted is not prescribed by the MPRDA or the regulations thereto. A production right, like an exploration right, is transferable, subject to ministerial consent.

16 For offshore production, how far seaward does the regulatory regime extend?

South Africa's regulatory regime extends to its territorial waters, the exclusive economic zone and the continental shelf. The territorial waters are 12 nautical miles from the baselines. The exclusive economic zone is the sea beyond the territorial waters, but within a distance of 200 nautical miles. South Africa has a coastline that is approximately 3,000km long; the continental shelf of South Africa covers approximately 200,000km^2, and in some instances may even extend beyond this area.

Pursuant to the provisions of the United Nations Convention on the Law of the Sea (UNCLOS), South Africa has submitted applications for the extension of its continental shelf. These applications were submitted in respect of areas surrounding the South African mainland, Prince Edward Island and Crozet Island. With regard to this last, South Africa submitted a joint application with France. The claims were submitted on 5 and 6 May 2009, and presentations were subsequently made on 19 and 23 August 2010. A decision on these claims is expected before 2016.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

There are no substantial differences between the onshore and offshore regimes. The rules that apply to onshore regimes also apply to offshore regimes, with the necessary changes. For instance, in the case of onshore applications, title deeds of the area over which the right is applied for will also have to be submitted.

The MPRDA does not make a distinction between different hydrocarbons. Hydrocarbons form part of the definition of 'petroleum', and the same laws are therefore applicable to rights to explore for or produce different hydrocarbons.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Exploration and production activities may be performed by the holders of exploration and production rights. Exploration and production rights may be acquired by submitting a bid in terms of a licensing round or by submitting an application for an exploration or production right to the Petroleum Agency in the prescribed format together with the stipulated application fee. The Petroleum Agency must accept the application upon the stated requirements being met, provided that the application does not infringe an existing right. Applications are processed on a first come, first served basis. The Petroleum Agency must inform the applicant in writing within 14 days of the submission of the application whether the application has been accepted or refused.

On being informed that an application for an exploration right has been accepted by the Petroleum Agency, the applicant must consult with interested and affected parties and prepare an environmental management programme within 120 days of the letter of acceptance of the application. The applicant for a production right must consult with interested and affected parties, conduct an environmental impact assessment and submit an environmental management programme for approval by the Petroleum Agency within 180 days of the acceptance letter.

The applicant for an exploration right or for a production right must establish that it has access to financial resources and the technical ability to conduct the proposed work programme optimally, that the estimate of expenditure is compatible with the work programme, that it has not contravened the provisions of the MPRDA and that it has the ability to comply with the relevant provisions of the Mine Health and Safety Act 29 of 1996. The applicant must also demonstrate that it has complied with the terms and conditions of the technical cooperation permit or exploration right, if applicable, and that it will expand the opportunities for HDSA, promote and provide employment, and advance the social and economic welfare of South Africans. An applicant for a production right must also demonstrate that it has made financial provision for the prescribed social and labour plan. On the approval by the Minister of the environmental management programme and compliance by the applicant with the aforementioned requirements in the MPRDA and regulations, the Minister must grant the exploration or production right, as appropriate, to the applicant.

There is no legal requirement that provides that only South African legal entities or persons may apply for or hold rights and permits in South Africa. However, the Companies Act 71 of 2008 (the Companies Act) provides that a foreign company (a company registered outside of the Republic of South Africa) must register as an external company (branch) with the Companies and Intellectual Property Commission (CIPC) within 20 business days after it first begins to conduct business or non-profit activities within the Republic of South Africa.

It would cost approximately 10,000 rand to incorporate and register a company through attorneys and statutory services firms. The incorporation and registration process normally takes between four to six weeks to complete but may take longer depending on delays at the CIPC.

See also question 40.

19 What is the legal regime for joint ventures?

Companies or other legal entities may engage in joint activities through unincorporated joint venture associations that do not constitute partnerships. The joint venture partners holding undivided interests in a right would enter into a joint operating agreement (JOA) that governs the contractual relationship between the parties. The JOA provides for the appointment of the operator, the duties and responsibilities of the operator, and the allocation of cost and profits.

The joint venture partners may jointly submit an application for a petroleum right or jointly submit a bid during a bidding round. Any right acquired is held by the applicants or bidders in undivided interests.

The Minister's consent must be obtained should a holder of a petroleum right wish to assign all of, or a participating interest in, its petroleum right to a third party. The assignee will have to establish its technical and financial ability to carry out and comply with the obligations and terms and conditions of the right.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Holders of exploration rights or production rights over an area that geologically forms part of the same petroleum reservoir must prepare a scheme for the development of the petroleum reservoir as a unit. Such a scheme must be submitted to the Petroleum Agency for approval by the Minister in accordance with the terms and conditions of the respective exploration or production rights.

There are no prescribed guidelines for reservoir unitisation in respect of cross-border reservoirs with neighbouring countries.

21 Is there any limit on a party's liability under a licence, contract or concession?

The standard form exploration and production right provides that the holder undertakes to defend, hold harmless and indemnify the state from and against any and all claims, costs, charges, liabilities and expenses, including reasonable legal costs that may be instituted against or suffered by any member of the state as a result of injury to or death of any person or damage or destruction to any property or the environment arising from the negligent or unlawful acts or omissions of the holder.

If there is more than one holder they will be jointly and severally liable.

The standard form exploration and production right also makes provision that the state gives a similar indemnity to the holder or holders.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Parent company guarantees are regularly used in South Africa. To obtain a right, it is necessary for the applicant to demonstrate that it has access to sufficient financial resources to cover the minimum work programme expenditure. If a new subsidiary is incorporated, its access to financial resources is usually demonstrated by providing the audited financial statements of its parent company together with a parent company guarantee. In practice the regulator will accept a limited parent guarantee from the immediate or the ultimate parent.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

Local content requirements are usually incorporated as part of licensing conditions. For instance, in terms of the standard form exploration and production rights the holder undertakes, among other things, to:

- implement programmes for the training and skills development of historically disadvantaged South Africans;
- give preference, in procuring for purposes of use in the exploration operations, the equipment, machinery, materials, instruments, supplies and accessories (goods) manufactured or produced by historically disadvantaged South Africans, provided that such goods are competitive with similar goods manufactured or produced or available outside South Africa in respect of cost, quantity and quality and that such goods can be made available at the time and the place required by the holder; and
- use contractors or sub-contractors who are historically disadvantaged South Africans and whose services and standards are competitive with those available outside South Africa in terms of price, quality and expertise, provided that such services can be performed at the place and within the time required by the holder.

A breach of local content requirements forming part of licensing conditions would constitute a breach of the licence and could lead to the revocation of the licence.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

Broad-based black economic empowerment (BBBEE) is a central part of the South African government's economic transformation strategy. The formulation of policy and legislation to achieve BBBEE has been driven by the Office of the Presidency, together with the Department of Trade and Industry. A multi-faceted approach to BBBEE has been adopted with a number of components which aim to increase the numbers of black people (being South African citizens who have been racially classified as African, Indian or Coloured) that manage, own and control the country's economy, and to decrease racially based income inequalities.

The Broad-Based Black Economic Empowerment Act 53 of 2003 (BEE Act) is the principal legislation through which BBBEE is measured. The Minister of Trade and Industry published codes of good practice, which set out the details of the measurement process. The Minister has also published various sector-specific codes which detail the manner in which BBBEE must be measured for businesses operating in particular sectors. Where a sector-specific code has been issued, businesses in that sector are required to apply the relevant sector code rather than the general codes. The general codes apply only where there is no sector-specific code although, in general, the general codes and the sector-specific codes apply the same broad principles. Sector codes have been published for the tourism, forestry, information communication and technology, chartered accountancy, finance, construction, transport and agriculture sectors.

Other than in certain state licensing, permitting and authorisation processes, there is no 'hard law' requiring that any private entity in South Africa must meet specific BBBEE targets or must implement a BBBEE policy. The BEE Act does not provide for offences or penalties relating to BBBEE performance but rather seeks, through the economic measures discussed below, to facilitate a uniform approach to BBBEE in the South African economy. In other words, none of the BEE Act, the current codes or the new codes impose any requirement that a certain level of BBBEE must be achieved or that a certain percentage of equity in a business must be held by black people and there are no sanctions for noncompliance but fronting practices are however prohibited. In certain sectors, such as oil and gas, mining and telecommunications, minimum equity requirements are or may be imposed in terms of the sector-specific legislation governing those sectors.

From a practical perspective, although there are no absolute requirements in relation to BBBEE, any company wishing to do business in the South African environment must consider and develop its BBBEE position as, in addition to the pressures from government discussed below, an entity that does not have a good BBBEE rating, or does not strive to improve its BBBEE rating, may be hampered in the conduct of its day-to-day business with government, organs of state and private sector customers. Most private sector businesses to which services are rendered or goods are sold will themselves have BBBEE procurement targets to meet and so the BBBEE rating of entities from which goods and services are procured will be a factor in determining whom to do business with.

In terms of the BEE Act, government bodies and state-owned enterprises (SOEs), such as PetroSA, are required to take private sector parties' relative BBBEE levels into account when they procure any goods or services, when they issue any licence or other authorisation, or enter into partnerships with the private sector. As such, businesses that interact with government by, for example, selling to government or that require licences to perform their particular activities (eg, oil and gas, telecommunications, broadcasting, mining, banking, transportation, etc) are incentivised to increase their levels of BBBEE.

The Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA) also provides that BBBEE must be considered by any public sector body in the context of its procurement practices and details the manner in which BBBEE must be taken into account by government departments and agencies, and SOEs. The PPPFA provides that the tender evaluation process for contracts with a value of up to 1 million rand are scored on the basis that 80 per cent of the available points are for price and 20 per cent of the available points are for BBBEE. In tenders for contracts above 1 million rand, 90 per cent of the available points are based on price, and 10 per cent of the available points are for BBBEE. The number of points that a bidder will score for BBBEE depends on its BBBEE status level.

See question 23 for a discussion on terms found in standard form exploration and production rights.

The Charter for the South African Petroleum and Liquid Fuels Industry sets various empowerment and ownership objectives to be achieved in order to promote the advancement of historically disadvantaged South Africans in the petroleum and liquid fuels industry. The most significant element of the charter is the target of 25 per cent ownership by historically disadvantaged South Africans of the aggregate value of the equity of the various entities that hold the operating assets of the South African oil industry. It, however, permits the state to condition exploration rights and production rights by imposing an obligation on the holder that not less than a 9 per cent participating interest in a production right be reserved for buy-in by historically disadvantaged South Africans and also requiring the holder to make contributions towards the Upstream Training Trust in order to fund skills development at various levels of historically disadvantaged South Africans. In practice, the state normally impose an obligation on the holder of exploration and production rights that 10 per cent participating interest be reserved for participation by historically disadvantaged South Africans.

The Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry sets a target of 26 per cent ownership for historically disadvantaged South Africans in the mining and minerals industry.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

An exploration or production right or any interest in such right, or a controlling interest in a company or close corporation, may not be ceded, transferred, let, sublet, assigned, alienated or otherwise disposed of without the written consent of the Minister of Mineral Resources. Reconnaissance permits and technical cooperation permits are not transferrable.

The applicant will have to prove that the transferee has the required technical and financial ability to comply with the exploration or production right obligations. Other than the 10 per cent government participation as described in question 13, neither the law nor the right reserve a pre-emptive right for the government. The law does not prescribe a time period within which the minister must approve or refuse the application for the transfer.

26 Is government consent required for a change of operator?

Should the parties to the rights remain the same, government consent is not required for a change of operator, as the government is not a party to JOAs. However, should the operator be specified in the exploration and production right, the government's consent would be required to amend the exploration or production right in order to reflect the correct operator.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

Both the disposal of an oil and gas right, and the disposal of shares in a company holding such a right could potentially trigger a capital gains tax (CGT) liability for the seller on the gain on disposal, on the understanding that the seller held the right or shares as capital assets.

Transfer

See question 35 for an overview of the normal rules applicable to taxation of capital gains. Although the disposal of an oil and gas right could potentially be subject to CGT, the parties to the transaction may, in terms of the Tenth Schedule to the ITA agree for either rollover or participation treatment to apply. Rollover treatment effectively defers the gain on disposal until a later stage, while participation treatment is more beneficial for the purchaser, as it enables the purchaser to claim the consideration as a deduction.

The transfer could also be subject to transfer duty at a rate of 8 per cent, unless the seller is a registered VAT vendor, in which case it would be subject to VAT of 14 per cent or, if the transaction qualifies as the sale of an enterprise as a going concern, at zero per cent. If VAT is chargeable at 14 per cent, the purchaser may be able to claim a refund of the VAT if it is a registered VAT vendor.

Change of control (sale of shares)

See question 35 for an overview of the normal rules applicable to taxation of capital gains.

Securities transfer tax (STT) is levied on the transfer of any share in a South African company and non-resident companies listed on the Johannesburg Stock Exchange. STT is levied a rate of 0.25 per cent of the taxable amount in respect of any transfer of a security that, in effect, is the higher of the consideration paid or the market value of the security. STT is payable by the seller but recoverable from the purchaser of the share.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

In terms of the MPRDA, an applicant for an exploration or production right must make financial provision for the rehabilitation and management of negative environmental impacts and must, once the right is granted, as far as it is reasonably practicable, rehabilitate the environment affected by the exploration or production operations to its natural or predetermined state, or to a land use that conforms to the generally accepted principle of sustainable development. The holders of the aforementioned rights are also responsible for any environmental damage, pollution or ecological degradation as a result of their reconnaissance, exploration or production operations and that may occur inside and outside the boundaries of the area to which such right, permit or permission relates.

Within 180 days of the occurrence of the lapsing, abandonment, cancellation, cessation or relinquishment of a right, the holder must apply to the Petroleum Agency for a closure certificate. The holder has an obligation to maintain the environmental financial provision for the rehabilitation and management of negative environmental impacts until the closure certificate is issued. When the closure certificate is issued, the Minister has a discretion to retain a portion of the financial provision to rehabilitate any latent or residual environmental impacts.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

An applicant for an exploration or production right must make financial provision for the rehabilitation and management of negative environmental impacts prior to the approval of an environmental management plan or programme (in other words, prior to the granting of the right). The amount for the financial provision is calculated based on applicable 'rehabilitation activities' identified by the Petroleum Agency. The amount payable for each rehabilitation activity is determined in consultation with the Petroleum Agency and an environmental consultant.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The Petroleum Pipelines Act provides a national regulatory framework for petroleum pipelines. Pipelines are regulated by and require the approval of NERSA, which is a functionary of the Department of Energy.

Transportation of crude oil and crude oil products by marine vessels is governed by the Merchant Shipping Act 57 of 1951. These activities are regulated by the Department of Transport with the designated authority being the South African Maritime Safety Authority.

The Marine Pollution (Control and Civil Liability) Act 6 of 1981, read together with the Regulations relating to the Prevention and Combating of Pollution of the Sea by Oil, is also relevant to the regulation of the transportation of crude oil and crude oil products by marine vessel.

The National Road Traffic Act and the National Road Traffic Regulations on the transportation of dangerous goods are administered by the Department of Transport and are applicable to the transportation of crude oil and crude oil products via tanker trucks.

South Africa is also a member of the Southern African Development Community (SADC) along with its neighbours Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, Swaziland, Tanzania, Zambia and Zimbabwe. SADC's Protocol on Transport, Communication and Meteorology requires member states to promote and develop an economically viable integrated transport service. South Africa has given effect to the SADC Protocol through enactment of the Cross-Border Road Transport Act 4 of 1998, which authorises the Minister of Transport to conclude road transportation agreements based on the principles of reciprocity, similar treatment and non-discrimination and, where appropriate, extraterritorial jurisdiction in respect of cross-border road transport.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

A professional driving permit is required in order to transport crude oil. The approval of NERSA must be obtained to operate a petroleum pipeline. Transportation of crude oil and crude oil products by marine vessel must comply with various domestic health, safety and environmental legislation as discussed below. The Department of Transport is responsible for issuing domestic road permits and the Cross-Border Road Transport Agency is responsible for the issuing of road permits across national boundaries.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Health and safety at oil-related facilities is regulated primarily, through the Occupational Health and Safety Act 85 of 1993 (the OHSA) (for midstream and downstream facilities) and the Mines Health and Safety Act 29 of 1996 (the MHSA) (for upstream facilities), while the environmental requirements are regulated by a suite of environmental legislation, most notably the National Environmental Management Act 107 of 1998 (the NEMA).

The Department of Labour administers the OHSA and its regulations, while the relevant provisions of the MHSA are administered by the chief inspector of mines. In addition, with regard to offshore installations, the Maritime Occupational Safety Regulations, Marine Traffic Act 2 of 1981 and Maritime Zones Act 15 of 1994 may also be relevant. In general, these laws and regulations provide for, inter alia, the health and safety of persons at work and for the health and safety of persons in connection with the use of plants and machinery. They prescribe general duties for employers in relation to health and safety, reporting, recording and investigation of incidents, medical surveillance in certain circumstances, fire precautions, and operating procedures and qualification requirements in order to operate certain equipment. Further, a number of SANS codes are incorporated by reference into this legislation and full compliance with the standards set out therein is required. Failure to comply with these requirements may result in a fine of generally not more than 100,000 rand, imprisonment of generally not more than two years, or both.

In terms of the MPRDA, which is administered by the Minister of Mineral Resources and his or her department, an applicant for an exploration or production right must prepare an environmental management plan or environmental management programme that assesses the potential impacts of its operations on the environment and proposes mitigation measures to minimise those impacts. In addition, the applicant must make financial provision for the rehabilitation and management of negative environmental impacts, and once the right is granted must, as far as it is reasonably practicable, rehabilitate the environment affected by the exploration or production operations to its natural or predetermined state or to a land use that conforms to the generally accepted principle of sustainable development. The holders of the aforementioned rights are also responsible for any environmental damage, pollution or ecological degradation as a result of their reconnaissance, exploration or production operations, and that may occur inside and outside the boundaries of the area to which such right, permit or permission relates.

The MPRDA further provides that the directors of a company or members of a close corporation are jointly and severally liable for any unacceptable negative impact on the environment, including damage, degradation or pollution advertently or inadvertently caused by the company or close corporation that they represent.

The Department of Environmental Affairs and the provincial environmental authorities bear the primary responsibility for general environmental regulation. In general, environmental legislation makes provision for both administrative and criminal sanctions, including fines of up to 10 million rand, suspension of permits, forfeiture of items and personal liability of directors for any offence committed by a company. In terms of the environmental legislation, most activities associated with midstream oil-related facility operations, including the expansion of any existing facilities, will require an environmental authorisation (an environmental impact assessment process is a prerequisite for obtaining an environmental authorisation), and persons who operate offshore installations must obtain a pollution safety certificate in terms of the Marine Pollution (Control and

Civil Liability) Act 6 of 1981. Depending on the nature of the facility, other environmental licences and permits may be required, for example, a waste management licence, which may potentially be obtained through a streamlined integrated authorisation process.

The MPRDA, administered by the Minister of Mineral Resources, and the Petroleum Pipelines Act, administered by NERSA, prescribe their own environmental requirements, which in many respects are similar to the requirements set out in the general suite of environmental legislation.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

As mentioned above, the OHSA and the regulations made under it, which are administered by the Department of Labour, contain the primary health and safety requirements applicable to oil. Inspectors, authorised by the OHSA, are permitted to enter the workplace without previous notice, question persons at the workplace, request, seize and inspect any document, and investigate the circumstances of any incident that has occurred at or originated from a workplace.

Penalties for non-compliance with the OHSA and the regulations made under it vary depending on the nature and seriousness of the infringement, but can include a fine not exceeding 100,000 rand, imprisonment for a period not exceeding two years, or both. A court order compelling compliance within a specified time period may also be enforced.

In terms of the NEMA and various other environmental laws, there is a general duty of care on a person who causes, has caused or may cause significant pollution or degradation of the environment (including land, the air and any body of water) to take reasonable measures to prevent such pollution or degradation. The person who owns or controls the land on which the incident occurs may also be held liable. It is apparent that oil may cause significant pollution and degradation of the environment, and thus any person who possesses, handles or stores oil must take all reasonable measures to ensure that the oil does not cause significant pollution or degradation of the environment. The Director General of the Department of Environmental Affairs has the power to serve a notice on any person directing them to comply within a prescribed time period. If the person fails to comply, the Director General may take steps to remediate the pollution and degradation and recover the costs. Further, anyone who contravenes this requirement is guilty of an offence and liable on conviction to a fine not exceeding 1 million rand, to imprisonment for a period not exceeding one year, or both.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

South Africa has a comprehensive labour legislation framework. There are a number of statutes that regulate the employment relationship in general. In addition to legislation, there are often also agreements between employers or employers' organisations and trade unions that have an impact on employment relationships.

The primary legislation is the Labour Relations Act 66 of 1995 (the LRA), which regulates the employer–employee relationship in South Africa, and the Basic Conditions of Employment Act 75 of 1997 (the BCEA), which sets out standard conditions of employment. The LRA gives effect to the fair labour practices referred to in section 23(1) of the Constitution of South Africa and thereby seeks to ensure compliance with the obligations of the country as a member of the International Labour Organization.

Another statute, the Employment Equity Act, imposes a duty on employers to provide employment equality and to prevent discrimination against employees on a number of grounds, including but not limited to ethnic or social origin, political opinion or race; gender, sex or sexual orientation; pregnancy or marital status; and membership of a minority group. There are further obligations created by the Unemployment Insurance Act 63 of 2001, the Occupational Health and Safety Act 85 of 1993 as well as the Compensation for Occupational Injuries and Diseases Act 130 of 1993. Penalties for an employer's failure to comply with various obligations in terms of these statutes range from fines (which can be a maximum of around 2 million rand in certain cases) to imprisonment for breaches of health and safety obligations.

There are no specific government standards for oil industry labour. The BCEA determines the minimum terms and conditions of employment and further regulates issues such as working hours, overtime and leave. A contract of employment cannot set terms and conditions less favourable than those provided for by the BCEA. There are, however, certain regulations to mining legislation that may impact on operations involving oil and gas exploration. These regulations provide for the maximum permissible working hours. However, provision is made for an exemption application to be made to the relevant authority for longer working hours.

The Labour Court has held that South African employment laws apply to foreign nationals working in South Africa, even where the individual does not have a valid work permit. Foreign employees must obtain a work permit; however, provision is made for rare and exceptional circumstances.

The holders of oil and gas rights are normally required to make contributions to the Upstream Training Trust (the Trust) to be used by the Trust for the training, education and obtaining of practical experience for historically disadvantaged South Africans and other South Africans in the manner determined by the trustees. See also question 23.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The main South African taxes are income tax and CGT imposed in terms of the ITA, VAT chargeable in terms of the Value Added Tax Act No. 89 of 1991 (the VAT Act) and royalties imposed in terms of the Royalty Act read with the Royalty Administration Act. The ITA also provides for withholding taxes in respect of, for example, royalties (for the use of intellectual property), dividends and interest. Other taxes include transfer duty on the transfer of immovable property and securities transfer tax on the transfer of securities (eg, shares). SARS is tasked with collecting revenue and ensuring compliance with tax laws.

South Africa applies a residence-based income tax system, in terms whereof South African residents are subject to income tax on their worldwide income while non-residents are taxed on their income from South African sources. Residents are further subject to CGT on their worldwide capital gains, while non-residents are subject to CGT only in respect of capital gains arising from the disposal of immoveable property, of an interest in or right to immovable property situated in South Africa or arising from the disposal of an asset that is attributable to a PE of that is non-resident in South Africa unless a double taxation agreement (DTA) exists and provides otherwise. A party will have an interest in immovable property if it holds 20 per cent or more of the shares in the company, and if more than 80 per cent or more of the market value thereof is attributable directly or indirectly to South African immovable property. To ensure collection of the CGT from non-resident sellers of immovable property, the purchaser may have to withhold tax from the amount paid to the non-resident seller. A rate of 7.5 per cent applies if the seller is a company.

Resident and non-resident companies are subject to income tax at a rate of 28 per cent and to CGT at an effective rate of 18.67 per cent.

The Tenth Schedule to the ITA deals specifically with the taxation of oil and gas companies and contains a number of favourable provisions applicable specifically to oil and gas companies. The Tenth Schedule also authorises the Minister of Finance to conclude binding fiscal stability agreements with an oil and gas company that, subject to the provisions of the ITA, are transferable.

The ITA defines a resident, in relation to juristic or legal entities, to mean any person that is incorporated, established or formed in South Africa or that has a place of effective management in South Africa. Branches of offshore companies will not fall within the definition of resident, but they could still be subject to South African income tax and CGT on the basis that they derive income or capital gains from a South African source, unless they can rely on a DTA for protection.

South Africa further imposes withholding taxes relating to dividends, royalties and interest, while a withholding tax on service fees is due to come into effect on 1 January 2016.

Dividends tax is a tax on the shareholder receiving the dividend, although it will be collected by the company declaring the dividend.

Update and trends

The Mineral and Petroleum Resources Amendment Bill B15 of 2013 (the Bill), which is intended to amend the MPRDA, was passed by both houses of Parliament and referred to the President for his assent during the course of March 2014. The Bill makes a number of wide-ranging changes to the upstream regulatory framework, particularly in relation to participation by the state and historically disadvantaged South Africans and has been staunchly opposed by the upstream oil and gas industry. It is therefore not surprising that, in January 2015, the President referred the Bill back to Parliament on the ground that it does not pass constitutional muster.

Until recently, a specific exemption applied to interest paid to a non-resident, unless the non-resident carried on business through a PE in South Africa. However, a new withholding tax on interest paid to non-residents came into effect on 1 March 2015. The payment of royalties to a non-resident in respect of the permission to use intellectual property has been subject to a withholding tax at a rate of 12 per cent for a number of years now. However, this rate has been increased to 15 per cent with effect from 1 March 2015.

It has been proposed that a withholding tax on fees in respect of technical, managerial and consultancy services to a non-resident will come into effect on 1 January 2016. All of these withholding taxes are imposed at a rate of 15 per cent, but the rates may be reduced by the terms of an applicable DTA. In addition, both the dividend withholding tax and the withholding tax on interest could be reduced to zero per cent in terms of the Tenth Schedule.

The VAT Act provides for the imposition of VAT in respect of the supply of goods and services and on the importation of goods and services. Persons (irrespective of whether they are resident or non-resident) who make taxable supplies in the course of an enterprise conducted wholly or partly in South Africa are required to register as VAT vendors, provided the minimum threshold is reached. VAT vendors collect output VAT from their customers and claim credits for input VAT paid by them. The difference is paid to SARS.

VAT is generally levied at a rate of 14 per cent at each stage within the distribution chain, although certain supplies are subject to VAT at a rate of zero per cent (referred to as 'zero-rated' supplies), while other supplies, such as financial services, are treated as exempt.

A person is required to register as a VAT vendor if it carries on an enterprise and the total value of taxable supplies during the previous 12 months exceeds 1 million rand or will exceed 1 million rand within the next 12 months.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

The price-setting system for crude oil products is mandated by the Petroleum Products Act. Maximum retail prices are set out in the regulations to the Act. Penalties for non-compliance vary between a fine not exceeding 1 million rand and imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment. South Africa is reliant on imported crude oil and is accordingly exposed to increased input prices. Upward increases in international crude oil prices partly account for the escalation in domestic inflation, with the impact of this being dependent on the strength of the rand.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Competition Act, 89 of 1998 as amended (the Competition Act) establishes three independent bodies, namely the Competition Commission (the Commission), the Competition Tribunal (the Tribunal) and the Competition Appeal Court. The Commission has a range of functions, which include investigating anti-competitive conduct in contravention of Chapter 2 of the Competition Act. The Commission is essentially the investigative body and functions as a prosecutor when referring matters to the Tribunal for adjudication. The Tribunal adjudicates on any conduct prohibited in terms of the Competition Act to determine whether any prohibited conduct has occurred, and if so, to impose any remedy provided for in the Act, including administrative penalties. Decisions of the Commission may be taken on appeal to the Tribunal. In turn, the Competition Appeal Court may review any decision of the Tribunal.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

The Competition Act prohibits certain practices that are per se contraventions of the Act, as well as practices that are not per se unlawful but that are subject to a 'rule of reason' analysis. The 'rule of reason' analysis involves the weighing up of anti-competitive effects of a practice or agreement against the pro-competitive gains derived from it. The pro-competitive effects must be greater and must offset the anti-competitive effect in order for the practice or agreement to be lawful. There is no prior approval procedure in place in order for parties to ensure that the proposed conduct does not contravene the Competition Act (whether per se unlawful or non-per se unlawful). Legal opinions by external competition law counsel are typically obtained prior to parties engaging in conduct that may be regarded as falling foul of the legislation. Advisory opinions may be requested from the Commission in relation to the application of the Competition Act. However, the Commission's advisory opinions are limited insofar as they are not binding on the Commission and they are subject to the specific facts provided. There is no prescribed time frame for the Commission to provide an advisory opinion. In practice, and depending on the nature of the opinion to be provided, the Commission may provide an advisory opinion within a period of two weeks or up to three months.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

South Africa is a signatory to a number of international treaties and multinational agreements that have an effect on the interpretation and application of its domestic laws, the most notable of these treaties being UNCLOS. The Constitution of South Africa directs the courts to prefer any reasonable interpretation of legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

The Petroleum and Liquid Fuels Charter sets empowerment and ownership objectives to be achieved in favour of HDSA within a specified time period. It allows the government to condition exploration rights and production rights by reserving not less than 9 per cent for HDSA buy-in and also requiring the right holder to make contributions towards the Upstream Training Trust in order to fund skills development at various levels. In practice, the state reserves a state option of 10 per cent, which is exercised at production level, and a further 10 per cent participating interest is to be reserved for HDSA partners.

It is not necessary, in principle, for investors to establish a local presence in South Africa. However, the Companies Act provides that when a foreign company carries on business or non-profit activities within South Africa, it is considered to be an 'external company' (in other words it is not regarded as having a separate identity) and is required to be registered as such in South Africa. The Companies Act sets out certain criteria, which, if met, mean that a foreign company must be regarded as carrying on business or non-profit activities within South Africa. These include: if that foreign company is party to one or more employment contracts within South Africa; is engaging in a course of conduct; or has engaged in a course or pattern of activities within South Africa over a period of at least six months, such as would lead a person to reasonably conclude that the company intended to continually engage in business or non-profit activities within South Africa.

If a local presence is required in South Africa, the minimum level required would be an external company.

See also question 18.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Although an ITAC permit is generally required, there are no other special rules in terms of South African law applicable to cross-border transactions of this nature.

* *With thanks to Aneria Bouwer and Tamara Dini for their assistance with this chapter.*

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Tanzania is drawing growing attention as a pivotal country in East Africa for oil and natural gas exploration with recent discoveries by Statoil announced by the government at the end of March 2015, raising proven reserves of natural gas from 47 to 55 trillion cubic feet. Tanzania has sedimentary basins with considerable energy reserves due to its geological and structural composition. This includes inland rift basins and modern rift system consisting of 114,000 square kilometres, a coastal and continental shelf, both onshore and offshore consisting of 280,000 square kilometres and deep sea basins of 300 metres to 3,000 metres deep, consisting of 140,000 square kilometres all totalling 543,000 square kilometres of resource rich sedimentary basins. Despite abundant discoveries of natural gas, Tanzania has yet to discover oil but there are new opportunities for gas discovery around the deep sea blocks off the coast of Tanzania and Lake Tanganyika on the border with Democratic Republic of Congo.

Commercial opportunities in exploration include farming into existing PSAs or participation in licensing tenders published on the Ministry of Energy's website www.mem.go.tz and the TPDC website www.tpdc-tz.com, power generation and upstream service and material suppliers. Active downstream activities are in relation to natural gas and not oil.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

At present, Tanzania is a net importer of oil used for both power generation and transportation. The increased use of natural gas is expected to cut down substantially the importation of oil. Out of a population of 45 million, only 18.4 per cent of Tanzanians have access to electricity. As such, the main source of energy in Tanzania is biomass-based fuels, particularly wood fuel (charcoal and firewood), which is the main source of energy for mainly rural areas and to an extent in urban areas.

The government plans to increase the present electricity capacity substantially by intensifying gas, utilisation and diversifying into other sources of energy including coal. Conservative estimates of coal reserves are at 1.5 billion tonnes, but there could be up to five billion tonnes in the country. At present, no power is generated from coal. Other energy sources could be from uranium, which has been discovered at Mkuju, Manyoni, Namtumbo and Tunduru with prospecting licences being granted to interested parties in many parts of the country. Renewal energies including geothermal, hydropower, wind and solar are also being considered and investors are developing projects for production and distribution of energy from these various sources, but opportunities are open for further investment in both exploration, production and distribution.

Approximately half the petroleum consumption is in the transport sector, 25 per cent is in manufacturing and the remainder is split evenly among households, agriculture, fisheries and other services. Recently, the oil industry has been deregulated and oil companies can import their oil products directly, a task that was previously the responsibility of the TPDC alone.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

Petroleum exploration and production is guided by the Petroleum (Exploration and Production) Act, 1980 (the Petroleum Act) and subsequently by the National Energy Policy of Tanzania, adopted in 2003, replacing the National Energy Policy of 1992. The Petroleum Exploration and Production Act is concerned largely with upstream activities and their regulation while the Petroleum Act, 2008 is responsible for all downstream activities including the importation, exportation, transportation, transformation, storage and wholesale and retail distribution of petroleum products.

A new gas policy has been adopted providing for a comprehensive framework for guiding the development and growth of the gas industry that would ensure optimal benefits to the people of Tanzania. It is expected that a new gas law will also be enacted in due course.

4 Is there an official, publicly available register for licences and licensees?

The Commissioner for Petroleum Affairs shall, pursuant to section 52 of the Petroleum Act, 1980, cause a record to be kept of every licence granted and of any dealing with, or affecting of, a licence. When a licence is granted, the Commissioner shall cause the name of the person to whom the licence is granted to be recorded as the registered holder of the licence. The register is open to the public and information thereon can be availed upon request and payment of a nominal fee. There is also a register for downstream activities, which contains petroleum data established under the Petroleum Act.

5 Describe the general legal system in your country.

Tanzania's legal system is sourced from the English common law, statutes, case law, Sharia and customary law. English common law applies only in the absence of statutory law and where commercial law has been largely enacted, common law does not apply. Sharia applies only in matters of marriage and succession to Tanzanians of Islamic faith and it is applied by the secular courts, while customary law, also applied by the courts, applies generally to matters of ancestral land ownership and inheritance.

The judicial system is made up of the Court of Appeal of Tanzania, which extends to Zanzibar, the High Court of Tanzania, courts of resident magistrates, district courts, primary courts and special tribunals such as the Land Court, the Tax Board, etc. Zanzibar has its own High Court and subordinate courts. A Commercial Court exists as a division of the High Court of Tanzania with the objective of speeding disposal of commercial disputes. There is also legislation providing for dispute resolution through arbitration.

Tanzania has the traditional supporting business and commercial laws in place, such as the law that guarantees private property rights, which is also enshrined in the Constitution, the law authorising business enterprises by registration of companies, business names, intellectual property, etc, the law governing contracts, bankruptcy, secured transactions, unfair trade practices and others.

There is a clear separation between the three governing pillars of government, an elected Parliament, the judiciary with judges having security of tenure guaranteed by the Constitution and the Executive, which cannot interfere in the judicial functions of the courts. There is, in Tanzania, an established respect for the rule of law.

Enforcement of foreign judgments is regulated by the Reciprocal Enforcement of Foreign Judgments Act (Cap 8, RE 2002). Enforcement applies only in respect of countries that have a reciprocal arrangement with Tanzania and, as such, where such an arrangement does not exist, a foreign judgment cannot be enforced in Tanzania. Foreign arbitral awards are generally enforceable by registration with the High Court of Tanzania. Tanzania is party to both the major international disputes resolution conventions, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards as well as the International Centre for Settlement of Investment Disputes (ICSID).

The anti-bribery regime is governed by the Prevention and Combating of Corruption Act, No. 11 of 2007. This Act is the successor to the repealed Prevention of Corruption Act, (Cap 329, RE 2002). There is an Anticorruption Bureau established for the purposes of promoting and enhancing good governance and the eradication of corruption. The Bureau investigates and recommends cases of corruption to the Director for Public Prosecution for prosecution. In recent years, the Bureau has been able to prosecute several high profile cases involving politicians and civil servants. Corruption is still a matter of concern to investors but there has been a significant transformation in terms of governance and oversight institutions, creating a degree of confidence in the government's ability to deal with corruption.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The principal laws governing petroleum regulation in Tanzania include the Petroleum (Exploration and Production) Act, 1980 (the Petroleum Exploration Act), which regulates the upstream and midstream activities; the Petroleum Act, 2008, (the Petroleum Act), which regulates the downstream activities; and the Energy and Water Utilities Regulatory Authority (Cap 414, RE 2002) Act, (the EWURA Act) responsible for technical and economic regulation of the electricity, petroleum, natural gas and water sector and the overall regulatory authority pursuant to the Petroleum Act.

The Petroleum Exploration and Production Act vests title to petroleum deposits, which includes oil, natural gas and related hydrocarbons within Tanzania in the state for the benefit of the people of Tanzania. The law permits a tripartite agreement to be entered into between the government, the TPDC and the oil company called the Production Sharing Agreement (PSA), pursuant to which TPDC applies for exploration licences. The law and the PSA offer flexibility for negotiations but the law contains certain implied provisions that are included in the Model PSA, which terms generally prevail. The Model PSA can be found on the TPDC website www.tpdc-tz.com

Although the terms of the PSA are generally stipulated in the Model PSA, 2008, there is flexibility in modifying them, adopting them to the needs of the industry and a particular oil company, but generally, the terms in relation to royalties and sharing of oil profit between the government, TPDC and oil companies do follow international industry practice.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

In terms of the Petroleum Exploration and Development Act, 1980, the Minister may, pursuant to section 51, when the registered holder of a licence is in default, by 30 days notice in writing, served on the registered holder of the licence, cancel the licence. There are strict conditions that the Minister is obliged to follow including the requirement to give the registered holder of the licence an opportunity to put right the default.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

There are two key regulatory and oversight bodies principally responsible for regulating oil exploration and production. The Ministry of Energy and Minerals (MEM) has the mandate to administer the legal and fiscal framework for petroleum exploration and production. In terms of the Petroleum Exploration and Production Act, 1980, the Ministry is the overall overseer of the upstream oil activities responsible for the regulation and supervision of the exploration and development of oil and gas, principally through licensing these activities. The other regulatory body is the TPDC, the state oil company fully owned by the government. TPDC is the contracting party together with the government to oil companies under the PSAs but, also has a regulatory function in relation to oil exploration and development. It is thought that the regulatory function will, not too distant in the future, be taken out of the TPDC so that it remains solely as the national oil company to hold national interests in the oil sector through the PSAs and other means.

9 What government body maintains oil production, export and import statistics?

Oil statistics with respect to production and import are kept by the Ministry of Energy and Minerals in collaboration with the Tanzania Petroleum Development Corporation. Statistics relating to downstream activities are kept by the EWURA, which monitors, among other things, importation of oil, transportation and distribution of petroleum products. Other sources for such statistics are the Bank of Tanzania and the National Bureau of Statistics.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

Oil in Tanzania is a natural resource vested with the government, which holds it for the benefit of the people of Tanzania. The law recognises the distinction between surface rights and subsurface mineral rights, and sets down clear guidelines regarding the interface between these rights. Surface land rights holders do not have any rights over natural resources under their land area.

A licence holder is obliged to seek and obtain prior written approval from any lawful occupier of the land that is the subject of the licence in certain specific cases, with an obligation to compensate the surface rights user for the loss of the use of the land and improvements thereon. Such consent is also required from respective authorities in respect of certain public lands and national parks or conservation areas. Such consent shall not be unreasonably withheld.

Where, however, any required consent is, in the opinion of the Minister, unreasonably withheld, the Minister for Energy and Minerals may direct that the need for the consent be dispensed with.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

More than 20 oil companies are active in oil and gas exploration in Tanzania, both onshore and offshore with a marked upswing in offshore exploration. No area is off limits for purposes of exploration but there are areas to which licence holders cannot have access without the prior consent of the surface rights holder or respective public authority in respect of certain public areas, national parks or conservation and game or marine reserve areas.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

Exploration and production rights are granted by the Ministry of Energy and Minerals. TPDC issues notices, usually by way of publication in the local media and its website www.tpdc-tz.com, that blocks are open for applications from interested parties. Sometimes, the notice is issued in the form of a call for tender for specific oil blocks and oil companies participate by submitting competitive bids. Such notices are also published on the Ministry website www.mem.go.tz.

Applications for exploration licences may be made by way of a letter or a bid document, as the case may be, addressed to the Minister for Energy and Minerals or to the Commissioner for Petroleum Affairs. If successful, the applicant or bidder will then be required to enter into a Production Sharing Agreement with the government and the TPDC who will be granted the licence. Negotiations will then ensue, but generally governed by the Petroleum Act and the Model PSA.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The government has the right, pursuant to the PSAs, to participate in a licence through the TPDC, which may, at any time, by notice in writing to the oil company, elect to contribute a participating interest of not less than 25 per cent of contract expenses other than exploration expenses. There are mandatory requirements to be met in exploration operations; however, participation in a PSA is negotiable as parties have to agree on all issues pertaining to the PSA.

Where joint operations have been established, no contract expenses incurred by TPDC shall be recovered from the cost oil or cost gas unless there is production from a development area in respect of which there are joint operations.

The available cost oil and cost gas shall be applied first to recover operating expenses and the contractor and TPDC shall be entitled to recover such expenses in proportion to their individual cumulative unrecovered operating expenses. After recovery of operating expenses any excess cost oil or cost gas available for distribution shall be applied to recover exploration expenses. Any unrecovered contract expenses shall be recovered out of the cost oil or cost gas available in the next calendar year or years in the manner as set out in the PSA. There is no mandatory government free carried interest.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

The TPDC will pay on its behalf and on behalf of the oil company a royalty in respect of petroleum obtained from the licence area, by delivering to the government 12.5 per cent of total crude oil or natural gas production prior to cost oil or cost gas recovery. There is no distinction relating to onshore or offshore licence areas for the purposes of royalty. Oil companies are subject to the prevailing tax laws of Tanzania. The rate for offshore is set at 50 per cent of production. There is no legislation providing for exemption from tax for the oil company or tax stabilisation measures other than free import duty on exploration equipment and machinery. However, it is common practice for parties to the PSA to negotiate tax stabilisation with regard to future production, which once agreed, may be gazetted in the form of subsidiary legislation.

A yearly rent is paid to the Ministry of Energy and Minerals under the PSA payable by the oil company to TPDC at the rate of US$4 per square kilometre in the first four years of an exploration licence, US$8 per square kilometre in the second extension period of another four years and US$16 per square kilometre in the second extension of the licence, being the final three years and totalling 11 years duration for the exploration licence unless extended by consent of the Minister. The annual charge in respect of a development licence is US$200 per square kilometre.

15 What is the customary duration of oil leases, concessions or licences?

An exploration period under an exploration licence may be up to 11 years (with an initial period of four years and two renewal periods of four and three years consecutively). However, the Minister for Energy and Minerals has the power to extend the exploration licence for a period not exceeding three years beyond the renewal period where petroleum is discovered in an exploration area within the period of two years before the date of expiration of an exploration licence that has been extended twice.

Upon discovery and development, TPDC on behalf of the oil company, will be granted a development licence for 25 years with a possible extension of a further period of 20 years.

16 For offshore production, how far seaward does the regulatory regime extend?

Offshore exploration and production of oil is regulated within the continental shelf and economic zone.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

There is no distinction between the offshore and onshore exploration and development regimes as both are regulated by PSAs. A minor difference is in relation to the size of blocks, whereby the difference is in the award process: offshore companies are given bigger exploration blocks as well as the rate of royalty for offshore exploration being less than that applicable to onshore exploration.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Individuals, if citizens of Tanzania and any corporate entity registered under Tanzanian law qualify for oil exploration and development licences. Oil companies traditionally incorporate local subsidiaries but they may also register a branch of a foreign registered company to undertake exploration and development.

19 What is the legal regime for joint ventures?

Tanzanian law does not recognise unincorporated partnerships but permits contractual joint ventures (JVs) between holders of licences with companies having financial and technical ability to undertake exploration and production. Such JV arrangements are commonly in the form of PSAs among the government, the licence holders and oil companies. These PSAs have statutory basis in the Petroleum Act 1980. This legislative framework offers considerable flexibility to the government in negotiating suitable terms with oil companies. There is also room for farming in into existing licences and establishing joint ventures to undertake exploration and production. JVs are not recognised as legal persons under Tanzanian law but there are mechanisms for parties to register a JV as a business name under the Business Names Registration Act, though such an entity does not enjoy a limited liability and, as such, the JV should be designed in such a way that the parties have recourse to their own limited liability status.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

In the event that licence holders are in a reservoir unitisation they may, of their own volition, enter into an agreement detailing the terms upon which the reservoir may be explored and developed and the sharing of profits. The law further grants powers to the Minister for Energy and Minerals to require bordering licence holders over a unitisation area to enter into an exploration and development agreement and to submit such an agreement to him or her within a specified period. The law makes no reference to cross-border reservoirs but it can safely be assumed that the two states would have to enter into diplomatic discussions on how to proceed with exploration and development of such a reservoir and the sharing of the resources and profits.

21 Is there any limit on a party's liability under a licence, contract or concession?

In terms of the PSA, joint operations means the petroleum operations in respect of which the TPDC has elected to contribute expenses. Failure by any party to meet calls for funds within the time limits agreed shall result in liability for interest on the unpaid amounts for the period that such amounts remain unpaid at the London Interbank Offered Rate plus 2 per cent.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

The Minister for Minerals may require the registered licence holder to provide guarantees, whether from shareholders or otherwise. These are common practice and security deposits are required but negotiable. The request to deposit security may not be necessary for multinational companies.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

Oil companies are obliged to give preference to the purchase of Tanzanian goods, services and materials, provided such goods and materials are of an acceptable quality and are available on a timely basis in the quantity required at competitive prices and terms. The oil company must maximise to the satisfaction of the Minister the level of usage of local goods and services, business, financing and the employment of nationals of the United Republic of Tanzania. There is, however, no strict enforcement of these provisions.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

The Petroleum Act is silent with respect to local content, but amendment of the law is imminent upon finalisation of the Local Content Policy, 2013 which is still at draft stage. However, under the new PSA 2013 model, contractors are obliged under articles 20 and 21 to employ Tanzanian nationals having appropriate qualifications, and specifically article 20 provides for local content obligations which include the following:

- complying with the government's Local Content Policy (the draft Local Content Policy 2013 has yet to be finalised and it contains general provisions regarding local content);
- the purchase of Tanzanian goods, services and materials, provided such goods and services are of certified standard and quality pursuant to prevailing laws;
- to give assurance to local enterprises in respect of prompt payment for goods and services actually provided for contractors and subcontractors, both foreign and local;
- to make use of Tanzanian service companies and contractors, where services of certified standards are available from such contractors at competitive prices and competitive terms;
- to follow an efficient, open, transparent, non-discriminatory and competitive purchasing and award process for the procurement of goods and services and to submit the procurement plan to TPDC, the national oil company;
- ensuring that unskilled manpower requirement is reserved for Tanzanian nationals only;
- ensuring that local content obligations are contained in subcontracts;
- for the annual work programme and budget to include details of local content, and agreed local content projects to be published in the local media;
- tenders must be advertised, evaluated and awarded in Tanzania, but TPDC may, on request, approve advertisement outside of Tanzania;
- to give preference to Tanzanian companies by including high weighting on local value added in the tender evaluation process;
- to collaborate with TPDC and other local authorities responsible for local content promotion;
- to ensure development of local employees by imparting technology and business expertise in all activities in petroleum operations, including but not limited to fabrication, information technology support (including seismic data acquisition, processing and interpretation support);
- operations and maintenance support; and
- maritime services, business support services (including accounting and auditing), human resource services, consulting, marketing and contract negotiations, financing and trading.

For the purposes of the local content requirements:

> *Tanzania goods, means goods manufactured, obtained or produced in the United Republic of Tanzania; Tanzanian Services means services provided by Tanzanians or companies, Tanzanian materials means materials obtained, produced or manufactured in the United Republic of Tanzania and Tanzanian Companies means companies incorporated in the United Republic of Tanzania and whose shares are wholly or at least 51% owned by Tanzanian nationals.*

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Assignment or transfer, of the whole or in part, of any of the rights, privileges, duties or obligations under the PSA or the transfer of a licence or any change of control of a company holding a licence is subject to the prior approval of the Minister for Energy and Minerals. Such approval must not be unreasonably withheld or delayed.

The process for obtaining approval takes approximately four weeks. No approval is required for a transfer to an affiliate but the government must be notified of the intended transfer. There is no pre-emptive right reserved for government.

26 Is government consent required for a change of operator?

The government's consent is mandatory for a change of operator. According to article 3 of the PSA on responsibilities and grant of rights, no change in operatorship shall take effect unless it has been approved by the Minister responsible for energy matters.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

According to the Income Tax Act, 2004 as amended, any transfer of any investment assets, or shares of a company having assets in Tanzania is charged capital gains tax or business gains tax at the rate of 30 per cent of the gain, of which 10 per cent in the case of a resident entity and 20 per cent in the case of a non-resident entity is payable immediately upon registration of the transfer and the balance thereof is payable as part of the corporate income tax in the relevant year of income. The transfer need not amount to a change of control to attract the tax. It is sufficient that there is a transfer of a part or a whole of an interest in a business or an investment asset.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

Decommissioning is generally governed by the Model PSA, 2008. The PSA has a specific provision for decommissioning. The joint venture partners will estimate the cost of the exploration and production activity. They will agree to set aside funds for decommissioning out of regular revenue that they collect and it is kept in a first class bank interest-bearing account (escrow account). There are no tax treatments on decommissioning, however, the liability lies with the oil company. The parent company may be asked to provide security for the cost for the decommission process in the event that the subsidiary company, which is the party to the PSA agreement, has breached or has failed to perform its obligations as agreed under the PSA.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

Security deposits, also known as abandonment funds, are required. They are estimated by the operator as part of the costs for gas or oil development and will be applied towards the restoration of the facility at the end of the project. The security deposit calculation is based on the estimate of the joint development by the government, TPDC and the oil company and remitted annually in to an account with a first rate bank as rated by Standard and Poor's Corporation or 'P-I' by Moody's Investor Service or comparable rating by another mutually agreed rating service.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Regulation of crude oil and crude oil products, for the time being, relates only to crude oil, as there is no internal production of crude oil. EWURA (www.ewura.go.tz) is responsible for the regulation of the downstream petroleum sector basically through licensing (to issue, to cancel or to revoke), quality control of the product and the infrastructure as well as pricing. All petroleum-related activities for the downstream are subject to EWURA licensing including importation, refinery, storage, transportation, pipeline transmissions, distribution and sale.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

Transportation of crude oil, products including refined products is regulated by the EWURA. Licences for transportation of petroleum products may be issued to applicants, subject to their vehicles meeting certain standards established by EWURA in collaboration with the National Standard Bureau.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

In respect of oil-related projects, sections 81 and 86 of the National Environmental Act (EM Act), read together with the Third Schedule thereto, impose a duty on investors to undertake or cause to be undertaken environmental impact assessment (EIA) studies addressing certain specific areas such as projected major changes in land use, carbon emissions control programmes and health and safety plans. EIA reports have to be submitted for approval by the National Environmental Management Council (NEMC) and the sector ministry. As exploration work progresses, periodic environmental impact statements (EIS) must be prepared and submitted for review by NEMC to monitor compliance. Investors have an obligation to establish internal environmental compliance administrative systems.

The Occupational Safety and Health Authority (OSHA) along with the NEMC ensures compliance of all the licensing and statutory requirements of the regulated industry and grants compliance licences.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

There are several health, safety and environmental requirements that apply to oil and oil products. These requirements can be found under the Occupational, Health and Safety Act of 2003 and the OSHA is the government body responsible for ensuring compliance with the requirements of the Act. This body acts as a regulator to ensure that all safety, health and environmental issues have been adhered to, such as:

- supply of adequate fire-extinguishing equipment to match the risk involved and stocks of fireproof materials to be in fire resistance storage;
- means of escape not to be blocked;
- contents of all rooms used by employees not to block free passage;
- easily operable doors to open outwards;
- markings on fire escape exits to be in both the English and Kiswahili languages;
- employees to be familiar with means of escape and the escape routine;
- a written policy on protection of health and safety of employees and a description of the organisation for implementation;
- guidelines for implementation; and
- copies of policy displayed in conspicuous areas.

The other regulatory bodies include EWURA and the Tanzania Bureau of Standards to ensure compliance in a manner that will avoid any potential leakages that may pose a threat to the environment.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

There are no exceptional standards for labour operating in the oil industry in Tanzania, but the overall standards stipulated under the Employment and Labour Relations Act, 2007 are in place to cater for the needs of oil industry employees. There is a training obligation and the PSAs but the extent of training is not defined.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The tax regime for the gas and oil industry is that found in the prevailing tax laws in Tanzania. The Income Tax Act, No. 11 of 2004 sets out the basic regime under which corporations and individuals are taxed.

Corporate income tax

Corporate income tax is 30 per cent of net profits, that is, after tax profits. There is an import duty exemption on all machinery, equipment and materials imported for use in petroleum operations and these may be re-exported free of any export duty or tax. Expatriates enjoy similar privileges in respect of importation of their personal effects. Please see question 27 in relation to capital gains tax.

Withholding tax

Withholding tax is chargeable in the event of a transfer of an asset or interest in an oil company that has a licence in Tanzania, whether the transfer occurs in Tanzania or outside Tanzania, provided the transfer relates to a company that has an interest in an exploration or development licence in Tanzania. Further, any person making making a payment that has a source in Tanzania, and is not subject to withholding tax under section 81 of the Income Tax Act, shall withhold income tax from the payment at the rate of 10 per cent in the case of a body corporate and 15 per cent in the case of business names (sections 4(bb) and 4(b)(iii) of the First Schedule).

Stamp duty

The Stamp Duty Act, Cap. 189 [R.E. 2006] (Stamp Duty Act), provides, inter alia, for instruments chargeable with stamp duty. Such instruments are listed in the Schedule to the Stamp Duty Act. Chargeable instruments must be stamped within 30 days of execution or if executed outside Tanzania, 30 days from date of arrival in Tanzania, otherwise they will attract a surcharge penalty payment of 25 per cent on the duty payable and not more than the amount equal to 10 times the amount of the proper duty or of the deficient portion thereof.

Value added tax

Value added tax (VAT) is regulated by the Value Added Tax Act, Cap 148 RE 2002. The Act regulates VAT, currently rated at 18 per cent, from the value that is added at each stage of supply of goods or services in Tanzania. The prevailing registration VAT threshold is 40 million Tanzanian shillings per month.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Tanzania does not produce its own crude oil and therefore has no crude oil pricing mechanism. Besides, by international industry practice, oil prices are fixed and regulated internationally. EWURA has the mandate to regulate downstream prices for oil and refined oil products and it has power to sanction default in this regard. Even so, EWURA has yet to have much impact as it is still evolving its operational rules.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Fair Competition Act, (Cap 285) of 2003, regulates anti-competitive activities. The Law has established the Commission for Fair Competition with authority to sanction and censure any anti-competitive practices in all sectors of the economy.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

Section 2 of the Fair Competition Act, (the FCC Act) defines a 'merger' as an acquisition of shares, a business or other assets, whether inside or outside Tanzania, resulting in the change of control of a business, part of a business or an asset of a business in Tanzania. A merger is prohibited if it creates or strengthens a position of dominance in a market. Thus, in enforcing the objectives of the FCC Act, a merger must be notified to the Fair Competition Commission (FCC), if the transaction involves a turnover or assets above the threshold, which, at present, stands at 800 million Tanzanian shillings. The calculation of this threshold is based on the combined market value of the merging firms. In terms of section 76 (3) of the FCCA, the fee for filing a Merger Notification is 25 million Tanzanian shillings.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Tanzania is a signatory to both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the ICSID. The Tanzania Investment Act, No. 7 of 1997, which applies to oil companies only in relation to the benefits available under the Act, provides that where disputes arise between a foreign investor and the government, the matter may be submitted to arbitration locally or through the ICSID or under a bilateral agreement between the government and country of the concerned foreign investor.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Acquisition of oil-related interests in Tanzania by oil companies is through the TPDC, which will apply for a licence upon which the oil company will participate pursuant to the PSA. Oil companies cannot hold licences directly.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Cross-border sales relate only to petroleum products imported by neighbouring countries and the concern of the regulator is mainly on the transit products, ensuring that they are not consumed locally because of the fact that no tax is chargeable on transit goods.

Update and trends

The Natural Gas Policy 2013, adopted in October 2014, focuses on among other things the restructuring of the national oil company, TPDC, and peritonising the domestic gas market as well as promoting local content. This will inevitably be followed by relevant legal instruments. However, the Natural Gas Bill issued in mid 2014 has yet to be enacted into law and it appears it may not be tabled during the current Parliament because general elections are due in October 2015. In March 2015, Statoil made another major discovery and now Tanzania's proven natural gas reserves stands at 55 trillion cubic feet. Exploration continues with 20 international oil and gas companies still active in various parts of the country. No final investment decision has yet been made by a consortium of the international gas and oil companies to build the liquefied natural gas terminal in the south-east part of Tanzania. It appears that the final investment decision will be made after the enactment of the new law, or the general elections.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The key commercial aspects of the oil sector are best summarised by the following data from the 2014 petroleum balance.

In 2014, Thailand imported a total of 805,000 barrels per day (bbl/d) of crude and condensate, while 127,600 bbl/d of indigenous crude and 93,800 bbl/d of indigenous condensate were procured for local consumption. Thailand imported natural gas (from Myanmar and as LNG) totalling 1,196 million standard cubic feet per day (MMcf/d) in 2014.

Natural gas plays a large role in satisfying Thailand's energy requirements. Production of indigenous natural gas (excluding MTJDA) increased from 3,279 MMscf/d in 2012 to 3,310 MMcf/d in 2014.

The government is actively promoting alternative energy projects and approved a 15-year alternative energy plan in January 2009. A new 10-year alternative energy plan was approved in November 2011. These projects will affect requirements for oil and oil products. Thailand completed the construction of and began operations in its first LNG receiving terminal on 6 September 2011 in Map Ta Phut industrial estate. PTT LNG's expansion of the LNG terminal is scheduled to be completed in the second quarter of 2017. The facility can currently offtake and unload up to 5 million tons of LNG a year (700 MMcf/d) and consists of two 160,000-cubic-metre LNG storage tanks and a port for all sizes of LNG vessels from 125,000 to 264,000 cubic metres. Expansion of the terminal will add a second 5 million ton unit, bringing the capacity of the receiving terminal up to 10 million tons of LNG a year (1,400 MMcf/d). LNG made up 182 MMscf/d of the total natural gas imports for Thailand in 2014, a slight decrease of 9 MMscf/d from 2013.

Thailand is a net importer of both oil and gas. Given the present petroleum resource base and demand profile, Thailand will remain a net importer of hydrocarbons for the foreseeable future.

Major producers of crude oil are PTTEP, Chevron, CEC International, Pan Orient and Mubadala.

The following oil refineries presently operate in Thailand: Esso, IRPC Plc (formerly Thai Petrochemical Industry), ThaiOil, Bangchak, SPRC and PTTGC.

Petroleum products are marketed by the following companies: PTT, Esso, Shell, Caltex, IRPC, Bangchak, Picnic Gas, PTG, SUSCO, S-Chem, Thai Oil, PC Siam, PTTRM, etc.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

According to Department of Alternative Energy Development and Efficiency (DEDE), the breakdown of Thailand's final energy consumption in 2014 was as follows:

- petroleum products, 47.8 per cent;
- natural gas, 7.1 per cent
- coal/lignite, 7.7 per cent;
- electricity, 18.8 per cent;
- renewable energy (eg, wind, solar, bagasse, agricultural waste, MSW, biogas, paddy husk), 10.7 per cent; and
- traditional renewable energy (eg, wood fuel, charcoal) 7.9 per cent.

Of the total crude oil procurement for local consumption in 2014, 86 per cent was imported, while exports of crude oil fell by 75 per cent in 2014 to 6,500 bbl/d.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

No. There are a number of laws and notifications, and a number of regulators. The Ministry of Energy (the MoE) is responsible for administering the laws governing petroleum. Energy policy is managed by the Energy Policy and Planning Office, the Office of the Permanent Secretary and the MoE.

The Energy Policy and Planning Office of the MoE is responsible for the formulation of policy and regulations and for the management of oil and energy conservation funds. Its scope of authority includes natural gas, oil, hydropower and alternative sources of energy.

4 Is there an official, publicly available register for licences and licensees?

The website of the Department of Minerals Fuels (DMF) displays a list of all petroleum concessions in force. However, the DMF does not maintain a register that is open to the general public.

5 Describe the general legal system in your country.

The modern Thai legal system dates from the reign of King Chulalongkorn in 1868. The Ministry of Justice was established in 1892. The Thai Bar Association was established in 1914. Its members presently number over 94,645 and include judges, prosecutors, practising lawyers, professors and others. The legal and accounting professions are regulated under professional licensing systems, which encourage high standards of service.

There is an independent judiciary that provides a forum for the fair settlement of disputes.

Government agencies may be sued in the courts and cannot raise a defence of sovereign immunity. However, state property is not subject to execution.

There is a Thai civil service that administers laws and regulations with a high degree of consistency and is largely free from political influences. Few, if any, decisions in a normal business transaction or investment project require going above the civil service for a political decision.

There are four basic codes: Civil and Commercial Code, Criminal Code, Civil Procedure Code and Criminal Procedure Code. In adopting these codes early in the last century, Thailand selected features from the two western legal systems (common law and civil law) adapting them to the circumstances in Thailand. In addition, there are the Land Code, the Revenue Code and hundreds of special laws and regulations governing most areas of commercial activity, many of them drafted and implemented with the assistance of international legal advisors. Decisions and rulings of the judiciary and civil service are not binding but have considerable force as precedents.

Although Thai is the language of the courts, most contracts between private parties may be executed in English or other foreign languages, and may be governed by foreign law. Such contracts may also specify a foreign jurisdiction or foreign or domestic arbitration as the dispute settlement mechanism. Foreign arbitration awards are enforced. However, foreign court judgments are not enforced by the Thai courts.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The following key laws and regulations make up the principal legal framework regulating oil activities:
- the Petroleum Act, BE 2514 (1971), as amended;
- the Petroleum Income Tax Act, BE 2514 (1971), as amended; and
- numerous ministerial regulations, notifications and announcements.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

No.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The following government regulatory and oversight bodies are principally responsible for regulating oil exploration and production activities:
- the Energy Regulatory Commission (www.erc.or.th);
- the DMF (www.dmf.go.th);
- the Energy Policy and Planning Office (EPPO, formerly NEPO) (www.eppo.go.th);
- the MoE (www.moe.go.th);
- the Ministry of Finance (www.mof.go.th); and
- the PTT Public Company Limited (PTT Pcl) (www.pttplc.com).

PTT Exploration & Production Public Company Limited (PTTEP) (www.pttep.com) is the state oil company and is separate to the regulatory and oversight bodies.

9 What government body maintains oil production, export and import statistics?

The Petroleum Institute of Thailand (the PTIT) is the best source of statistics on the petroleum and petrochemical business. It collects statistics from concerned government departments, including the DMF, DEDE, PTT, DOEB, Customs Department and EPPO.

The PTIT was established in 1985, with support from public, academic and private sectors, to operate as a non-profit foundation. Some of the PTIT's publications include:
- PTIT Focus, published monthly with one additional annual issue;
- Thailand's Petroleum Exploration and Production Fact Book;
- Thailand Petroleum and Petrochemical Complex Capacity;
- Petrochemical Products Classification;
- Petroleum Encyclopedia; and
- Petrochemicals Encyclopedia.

The PTIT website is www.ptit.org.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

Title to petroleum resources belongs to the government. Owners of surface land have no rights to the subsurface mineral resources underneath their land. Under the Minerals Act, the consent of the surface owner is required for issuance of a mining lease for minerals. There is no equivalent rule with respect to petroleum resources, but production permits require an environmental impact assessment report to be approved and the acquisition of surface land necessary for production, storage and transportation facilities.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

The DMF website (www.dmf.go.th) includes up-to-date summaries of exploration and production activity, and exploration blocks open for bid.

Another source of information is the PTIT (see question 9).

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

The DMF regulates petroleum exploration and production, under the supervision of the Petroleum Committee established under the Petroleum Act.

Rights to explore for and produce petroleum are granted under petroleum concessions, in a form prescribed in Ministerial Regulation Prescribing Form of Petroleum Concession, BE 2555 (2012).

The DMF awards petroleum concessions by international bidding. Bids may be lodged only for exploration blocks announced by the DMF. Other areas are closed to exploration by the private sector.

The Defence Energy Department has jurisdiction over some limited areas and has the authority to grant licences to explore and produce, under NEC No. 331 re benefits, Energy Department, 13 December 1972.

Although not expressly required by law, the Thai practice is to award concessions only following the publication of an international invitation, usually after a minimum 45-day notice period. Applications are evaluated on a points system by the Petroleum Committee, which forwards its recommendations to the Cabinet for approval.

20th round

The MoE issued an announcement dated 28 May 2007 inviting applications for petroleum concessions. Applications could be filed during a one-year period and were considered monthly after the 15th day of each month. An application for a block subject to a previous application would not be accepted until consideration of the earlier application was completed.

In general, the invitation prescribed the usual conditions applicable to recent rounds. There was no condition that each applicant must register as a limited company under Thai law. The condition that a company must have paid-up capital of at least 100 million baht was first omitted in the 19th round.

Each application was graded according to the following system:
- petroleum exploration programme and expenditure and work obligations – 80 points; and
- special advantages, such as scholarships, training, contributions to support petroleum development in Thailand, state participation after discovery, etc, – 20 points.

The 20th round of bidding required for the first time that these special advantages must include:
- on approval of a 'production area', the offer of an interest of not less than 5 per cent to a majority Thai-owned company, subject to reimbursement of its share of past expenditures and bearing its share of future expenditures; and
- the use of petroleum service contractors and equipment available in Thailand.

Applications and supporting documents were submitted to the DMF. If an applicant did not have adequate equipment, personnel and financial resources to perform the exploration programme, the applicant was also required to submit a guarantee from an entity that did have those resources. Applicants could also offer to provide a bank guarantee.

Applications could be filed for 65 exploration blocks located onshore and in the Gulf of Thailand.

Detailed descriptions of the exploration blocks and of the geological constant factors and special reductions of each block were set forth in the announcement, which may be found at www.dmf.go.th.

21st round

In October 2014, the 21st bid round was announced for exploration and production licences for 22 onshore and offshore oil and gas sites, with a combined area of 43,000 square kilometres. Bids were due in February 2015. The 21st bid round was postponed, then cancelled in March 2015. The Prime Minister has ordered a three-month delay for the National Legislative Assembly to amend the petroleum law, to allow certain blocks to be granted under PSCs. It is reported that several alternatives to the current petroleum concession system are being considered.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The government has no right to participate in a petroleum concession. Petroleum concessions do provide, upon discovery, for a majority Thai-owned company to acquire a participating interest on terms set forth in the conditions of bidding.

The conditions of bidding in the 20th bid round dated 23 May 2007 included the following:

> *After a production has been first correctly defined in the concession block, the applicant must propose in its special advantages to have a Thai juristic person (established under the laws of Thailand with Thai nationals holding more than 50% in it), with the approval of the Petroleum Committee, to acquire an undivided participating interest of not less than 5% under the concession. Such juristic person shall reimburse the applicant for the expenditures incurred from the block prior to the date of its participation according to its participating interest share and bear its participating interest share of all the expenditures incurred in the block from the date of its participation.*

The conditions of bidding for the 21st bid round included additional obligations of concessionaires.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Royalties

Rates of royalties under Thailand III terms are as follows, imposed at progressive rates:
- up to 60,000 bbl/d – 5 per cent;
- 60,000 to 150,000 bbl/d – 6.25 per cent;
- 150,000 to 300,000 bbl/d – 10 per cent;
- 300,000 to 300,000 bbl/d – 12.5 per cent; and
- over 600,000 bbl/d – 15 per cent.

In deep-water blocks, the royalty is 70 per cent of the above rates. The government has the authority to fix lower rates in special situations.

Royalties in cash are based on posted, realised or market price. Royalties in kind are volumes equivalent in value to royalties in cash. Royalty disputes are to be settled by court, not by international arbitration.

Special remuneratory benefit

In addition to royalties, petroleum concessionaires under Thailand III terms are subject to the special remuneratory benefit (SRB), a form of excess profits tax adopted in 1989.

SRB is a ‘windfall profits’ tax, payable only in years that the concessionaire has ‘petroleum profit’. In calculating such profit or loss, capital expenditure, operating costs, a special reduction (an expense ‘uplift’) for the year and petroleum loss carried forward indefinitely from prior years may be deducted. The ‘special reduction’ was specified as zero per cent. SRB is calculated by an exploration block at the following rates, subject to a ceiling of 75 per cent of petroleum profit:

Income per metre of well	SRB
Up to 4,800 baht	None
4,801 to 14,400 baht	1 per cent per 240 baht increment
14,401 to 33,600 baht	1 per cent per 960 baht increment
Over 33,600 baht	1 per cent per 3,840 baht increment

To determine the ‘income per metre of well’, annual petroleum profit is first calculated and then adjusted for inflation and exchange rates. Income per metre of well equals this adjusted annual petroleum profit divided by the total depth of all wells drilled during the concession period plus the geological stability factor. The geological stability factor is fixed for each geological region and is at least 150,000 metres higher in difficult drilling areas.

Income tax

Petroleum concessionaires are also subject to income tax under the Petroleum Income Tax Act, BE 2514 (1971), as amended.

Income tax is 50 per cent on profits (or 35 per cent on profits plus 23.08 per cent remittance tax, under Royal Decree), payable semi-annually.

Revenues, deductions and taxes for all Thailand III blocks of the same concessionaire may be consolidated. Other blocks of the same concessionaire must be consolidated separately.

Capital costs are generally amortised over five to 10 years (accelerated depreciation permitted).

Operating costs, royalties and SRB are expensed.

Revenues on crude oil sales are based on the realised price or, for exports, on the higher of the realised or ‘tax reference’ price, the latter being the posted price with a discount.

There is 10-year loss carry forward and no loss carry back.

Surface rentals

No surface rentals are payable.

Stabilisation measures

There is no tax stabilisation legislation. However, clause 12 of the model form of petroleum concession includes broad stabilisation language in respect of all basic benefits, rights and duties.

15 What is the customary duration of oil leases, concessions or licences?

The duration under Thailand III terms is:
- exploration period – six years, with a three-year renewal period; and
- production period – 20 years from the end of the exploration period, with a 10-year renewal.

Commercial field test

This requires production plans and reports, and government approval of amendments to plans.

There is an obligation to produce within four years, with possible deferrals of two years each.

Government sole risk option

This is exercisable after a 12-month negotiation period. If the government does not proceed within two years, the concessionaire may request return of the area.

If the government proceeds and realises profits, the concessionaire will be reimbursed its costs. The concessionaire may elect to enter into a joint venture with the government for a period of three years.

16 For offshore production, how far seaward does the regulatory regime extend?

Thailand has published the limits of its continental shelf for the purposes of mineral exploration.

Thailand and Malaysia agreed in 1979 on a joint development area to resolve a dispute about marine boundaries. In 1997, Thailand and Vietnam agreed on marine boundaries in the Gulf of Thailand. There is a substantial offshore area between Thailand and Cambodia that is subject to overlapping claims, referred to as the ‘overlapping area’.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

There is no difference between onshore and offshore regimes in Thailand. There are different regulations in place for ‘deep sea’ exploration, but the MoE regulates both exploration and production (see questions 7 and 8).

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Applicants for petroleum concessions must be a company (either Thai or foreign in the latest bidding round) and have the assets and personnel capable of performing exploration and development work obligations.

Prior to the 20th bidding round, successful applicants are required to register a limited company under Thai law, with paid-up capital of at least 100 million baht. In the 20th bidding round, qualified foreign companies were able to be awarded concessions. The Petroleum Act sets forth the basic qualifications of bidders for petroleum concessions, which may be further specified in the invitation to bid (for further discussion of the 20th round, see question 12).

The conditions of bidding will state whether there are any restrictions on companies applying for a petroleum concession. A concessionaire under the 20th bid round could be a Thai company or a foreign company. If a foreign company were awarded a concession, it would need to register a branch.

19 What is the legal regime for joint ventures?

Generally, contractual joint ventures are not recognised under Thai law, except for joint ventures for income tax purposes (as defined in section 39 of the Revenue Code) and joint ventures under the Petroleum Act. The Petroleum Act does not prescribe any rules concerning joint ventures other than that parties to a joint venture are jointly and severally liable for the obligations of the concessionaire. A petroleum concession with two or more exploration and production companies will include a provision naming the operator of the joint venture.

At present, there is no requirement that the joint venture agreement between the joint venture partners be approved, filed or registered.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Section 72 of the Petroleum Act provides that the government may order unitisation. However, there are no regulations governing how this power is to be exercised. Drafting a regulation that addresses unitisation is part of the present law reform programme of the Department of Mineral Fuels.

21 Is there any limit on a party's liability under a licence, contract or concession?

There is no express limit on the liability of a concessionaire under the petroleum concession.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Parent company guarantees are required under section 24 of the Petroleum Act in cases in which the applicant for concession does not 'have capital, machinery, equipment, tools and specialists' to explore for, produce, sell and dispose of petroleum. There are no regulations prescribing who is the parent whose guarantee is required.

In the 21st bid round, petroleum concessionaires are required to post both parent company guarantees and bank guarantees to secure their work obligations. the mandatory requirement to provide bank guarantees was introduced in the announcement of 21st bid round on 21 October 2014. The deadline for submission of bids was 18 February 2015. Bids must include bid security of baht 3 million per block, and a letter of intent to place a performance bond to secure expenditure obligations and physical work obligations.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

In a number of sectors, there are requirements to use local goods and services. There are a number of laws which require majority Thai ownership. Under the Foreign Business Operations Act, 43 businesses (including petroleum service business) are subject to restriction, and require foreign service companies to obtain 'foreign business licenses'.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

Undertakings to use local goods and services are a factor in the award of petroleum concessions. The model form of petroleum concessions include obligations to use the services of Thai vessels and Thai contractors for equipment and services to offshore production platforms. The conditions of bidding for the 21st bid round include as factors in the award of concessions and 'special incentives' which might include covenants to use specific local equipment and services.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Under section 50 of the Petroleum Act, transfers of concessions to third parties require permission from the minister of the MoE after obtaining approval from the Petroleum Committee. Transferees must possess all qualifications under the Petroleum Act in order to be eligible to receive a concession block from the transferor.

The Petroleum Act does not include provisions concerning 'change of control' (except those arising from transfers of interests in a concession).

The government has no pre-emptive rights.

26 Is government consent required for a change of operator?

Transfers of concession and changes of operator between affiliated companies are governed under section 48 of the Petroleum Act according to the following rules:

- if the concessionaire was granted the concession before 4 August 1989 (Thailand I):
  - the concessionaire shall notify the director-general of the DMF in writing of a change of operator and fix the effective date of such change, which would be done simultaneously with the transfer of the concession. Note that no approval from DMF is required in this case; and
  - if the concessionaire was granted the concession after 4 August 1989 (Thailand III):
    - the concessionaire shall notify the director-general of the DMF in writing of the change of operator, which would be done simultaneously with the transfer of concession; and
- the transfer shall become effective only when the concessionaire receives a letter from the director-general advising that the transfer was made correctly in accordance with the law. It is possible in some cases that the DMF will pass the application for transfer of concession to the minister of the MoE.

Transfers of concession and changes of operator under section 50 of the Petroleum Act;

- where the concessionaire transfers such concession to another company that is not governed under the conditions of section 48:
  - the concessionaire shall notify the director-general of the DMF in writing of the change of operator, which would be done simultaneously with the transfer of concession; and
  - the transfer shall become effective only when the concessionaire receives approval from the minister of the MoE; and
- for a change of operator among co-concessionaires:
  - the concessionaire shall notify the director-general of the DMF in writing of the change of operator. Under this scenario, an approval for a change of operator is not required; as such the DMF will suggest that the company effect the change of operator after it has received an acknowledgement letter from the DMF. While no approval from the DMF is required, it should be noted that it will take approximately one month for the DMF to issue the acknowledgement letter.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

Transfers of interests in a petroleum concession may trigger income tax liabilities under the Petroleum Income Tax Act.

Changes in control do not trigger income tax liabilities.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

During the 4th Petroleum Forum (see: www.dmf.go.th/cms/assets/1/The%204th%20(DMF)%20Petroleum%20Forum%20Proceeding.pdf, 4th Petroleum Forum; May 2011, pp 24–26), an overview of pending legislation was provided for Thailand's decommissioning guidelines. The DMF, along with related government agencies, petroleum operators and the PTIT, formed a Decommissioning Task Force to develop Thailand Decommissioning Guidelines of Upstream Installations. The requirements presented involve a four-stage Decommissioning Environmental Management Plan. All stages require consultation and approval by the DMF. The four stages are:

- preparation of a decommissioning environmental assessment report;
- selection of the best practical decommissioning option;
- preparation of a decommissioning environmental management plan and a post-decommissioning monitoring plan; and
- verification of implementation of the decommissioning environmental management plan and post-decommissioning monitoring plan.

At the present time, the draft Ministerial Regulation, which was approved in principle of the Cabinet in June 2012, is being reviewed by the Council of State.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

At the present time, no security deposits are required.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Under present government policy, PTT has a monopoly on the natural gas pipeline business. There are a few private pipelines for the transportation of oil products.

There are a number of government bodies concerned with the transportation of petroleum, which may be subdivided into the following categories:

- marine – Water Transport and Merchant Marine Department and the Ministry of Transport (the MOT);
- railway – State Railways of Thailand; and
- tanker trucks – Department of Land Transport and the MOT.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

The 2000 Fuel Oil Trading Act aims to limit the potentially adverse impact of fuel transport on the environment, persons and property. Under the Act, the MoE's department of energy business regulates the storage, transportation, use and disposal of fuel oils, including issuing specifications for containers used in transport. Oil fuel transporters must obtain licences under the Act.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Concessionaires are subject to the following labour and environmental legislation of general application:

- the Labour Protection Act BE 2541 (1998);
- the National Environmental Quality Act BE 2535 (1992); and
- the Fuel Oil Trading Act BE 2543 (2000).

The Labour Protection Act of 1998, as amended in 2008, is administered by the Ministry of Labour and Welfare and applies to any employer with 10 or more employees. The labour inspection officer, appointed by the minister, enforces the Act, which covers all general employment practices including the terms and conditions of employment, occupational safety and health, and environmental conditions. Non-compliance with the Act may result in fines of 2,000 baht or one month's imprisonment, or both.

Under the Environmental Act, the Ministry of Natural Resources and Environment, in conjunction with the National Environment Board, prescribes categories of industrial projects subject to regulation and approval by the Office of Natural Resources and Environmental Policy and Planning. An environmental impact assessment report must be filed before receiving approval for a regulated industrial project.

The Fuel Oil Trading Act is administered by the Department of Energy Business, a subdivision of the MoE. It requires major oil traders who trade 100,000 metric tonnes of oil (or 50,000 metric tonnes of liquefied natural gas) or more each year to obtain a licence from the MoE and to keep records regarding the purchase, refining, production and disposal of fuel oil. Penalties under the Act include licence revocation, imprisonment and fines.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The Fuel Oil Trading Act governs the composition and quality of fuel oils and outlines inspection measures to ensure that fuel traders comply with the quality-control regulations. The Energy Business Department issues notifications prescribing the composition and quality of petroleum products. Penalties under the Act include licence revocation, imprisonment and fines.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The Working of Aliens Act BE 2521 (1978) mandates work permits for foreign nationals working in Thailand. The procedures to obtain a work permit are cumbersome and require advance planning to assemble the necessary supporting documents. One of the requirements to apply for a work permit is a non-immigrant (class B) visa. Section 69 of the Petroleum Act provides a procedure that facilitates the issuance of work permits, which is administered by the Department of Mineral Fuels and the Petroleum Committee.

There are a number of laws providing for labour protection, labour courts, unions, provident funds, social security, etc. A key law is the Labour Protection Act, BE 2541 (1998), which prescribes rules of employment. The Skill Development Promotion Act, BE 2545 (2002) requires business operators employing 100 or more employees to provide skills training each year.

A concessionaire is required to employ Thai nationals to the optimum extent possible and train Thai nationals in order to improve their skills to such extent that they are qualified to take up positions at all levels in petroleum operations within a reasonable period of time.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Petroleum concessionaires are subject to income tax under the Petroleum Income Tax Act, BE 2514 (1971), which is administered by the Revenue Department of the Ministry of Finance.

Petroleum service companies and operators of transportation, marketing and distribution activities are subject to income tax under the Revenue Code, which is also administered by the Revenue Department.

The Excise Tax Act, BE 2527 (1984), applies to the production and sale of certain petroleum products.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Export sales are made at a 'free-on-board' posted price fixed by the concessionaire and agreed to by the government. Domestic sales, in the absence of regular exports, are made at a price not exceeding that of imported crude oil; otherwise, they are made at the average realised price of exports by all concessionaires.

The government from time to time prescribes prices for the retail sale of petroleum products.

Retail petroleum companies are required to make contributions to the Oil Fund.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

Under the Energy Industry Act, BE 2550 (2007), the Energy Regulatory Commission regulates competition in the energy industry operation and prevents abusive use of monopoly power.

The Trade Competition Act, BE 2542 (1999), established the Trade Competition Commission and prohibits certain practices that might lead to a monopoly or unfairness in competition.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

A request may be made to the Office of the Trade Competition Commission for a ruling on whether a proposed action violates the Trade Competition Act.

Update and trends

As of May 2015, no decision has been made on amendments to petroleum laws and conduct of the 21st bid round.

Martial law was declared on 20 May 2014. On 22 May 2014, a military government took power. On 1 April 2015 martial law was lifted. There has been little impact on business in the private sector. The civil service and civil courts are operating normally. Following promulgation of a new Constitution (the 20th since 1932), a general election will be conducted. This is a familiar cycle in Thailand. Newcomers to Thailand should meet with their chamber of commerce for advice.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Thailand is a party to many international treaties, bilateral investment protection treaties, double tax treaties, etc.

Thailand is not a party to the ICSID Convention.

Thailand is not a party to the Extractive Industry Transparency Initiative index.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

Petroleum concessions may be 100 per cent foreign-owned. A foreign operator must have a registered branch and subsidiary in Thailand.

Refineries and retail petroleum businesses are subject to ceilings on foreign ownership of businesses under the Foreign Business Operations Act, BE 2542 (1999), the Land Code and other laws.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Cross-border sales or deliveries of crude oil and products are subject to Customs Department and (with respect to products) Excise Department regulation.

* *The author would like to thank Christopher Kalis for his assistance with this year's update of this chapter.*

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Trinidad and Tobago (TT) is the only Caribbean state that is not a net energy importer but a major exporter of oil and refined products. Proven crude oil reserves were estimated at 728 million barrels at January 2013 according to the US Energy Information Administration.

The activities carried out by the oil industry in TT may be broadly classified into three segments, namely, upstream, midstream and downstream. There are 10 major upstream, three major midstream and nine major downstream operators in TT.

The upstream segment involves oil and gas exploration and production activities. In TT, such activities are dominated by large and medium foreign multinational companies such as British Gas of Trinidad and Tobago, BP Trinidad and Tobago, Centrica, BHP Billiton, Total, EOG Resources, and Repsol. The state-owned enterprise, Petroleum Company of Trinidad and Tobago (Petrotrin), is the largest local company engaged in upstream activities. The midstream operations refer to pipeline transportation and related natural gas processing and treatment facilities. There are two major specialised mid-stream companies in Trinidad. The downstream energy sector is sub-divided into liquefied natural gas manufacture, petrochemical plants, refining and marketing. In the marketing subsector two local companies dominate the retail distribution and sale of petroleum products.

While most oil and gas exploration bid rounds are focused offshore, the government has also encouraged onshore exploration, and 2013 saw the first dedicated land-based bid round since the 1990s.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

According to the Ministry of Energy and Energy Affairs' (MEEA) published statistical bulletins for 2011 to 2013, at least 9 per cent of the country's energy needs are provided directly or indirectly by oil and approximately 92 per cent are provided by natural gas. Neither nuclear energy nor wind power is utilised in TT. Solar photovoltaic power is being introduced on a phased and limited basis, and the government has introduced fiscal incentives to make its use more attractive to consumers. 100 per cent of Trinidad's petroleum product consumption needs are supplied by domestic production.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

At present there exists no overarching policy regarding oil-related activities or a general energy policy. However, one is expected to be implemented expected shortly.

4 Is there an official, publicly available register for licences and licensees?

There is an online licence register at the MEEA's website www. energy.gov.tt, which is accessible by the public. No payment is required to access the register.

5 Describe the general legal system in your country.

The law of TT is based upon the common law of England and Wales and statutes of general application in force in England and Wales in 1848 as modified by subsequent local legislation. The rule of law is upheld. Contractual and property rights are enforced by the courts.

Domestic judgments

After a judgment is entered in favour of a judgment creditor, such a judgment may be registered under the provisions of the Remedies of Creditors Act, Chapter 7:09. The registration acts as a charge on the lands and rents of the judgment debtor and must be renewed after three years.

Pursuant to the Civil Procedure Rules (CPR), the general rule is that once a judgment or order has become enforceable, the court must issue an enforcement order if the judgment creditor files the appropriate application. Part 46 of the CPR provides a menu of enforcement actions that are available to a litigant.

Foreign judgments

The enforcement of foreign judgments by the courts of TT is usually dealt with through one of two avenues:

- by way of registration under the Judgments Extension Act Chapter 5:02; or
- by way of common law, namely, by instituting an action in TT on the foreign judgment.

It is also possible in certain circumstances to institute a fresh action in TT based on the original cause of action.

The Judgments Extension Act provides a system of registration to facilitate the direct enforcement in TT of United Kingdom judgments. The act also provides for the registration of the judgments of specified Commonwealth countries that have similar reciprocal provisions. An application to register such judgments should be made within 12 months after the date of the judgment or such longer period as may be allowed by the court. Once a judgment is registered under the Act, from the date of registration it is of the same force and effect as a judgment originally obtained in TT.

A foreign judgment that emanates from a jurisdiction that does not fall within the schedule of countries listed in the Judgments Extension Act will be enforceable in TT once the courts are satisfied that:

- the foreign court is of competent jurisdiction;
- the foreign judgment is for a definite sum of money;
- the foreign judgment is final and conclusive; and
- there is no defence to the recognition of the foreign judgment.

Arbitration awards

TT law recognises and will enforce an agreement to refer disputes to arbitration whether locally or in a foreign jurisdiction. All awards must be enforced through the courts on application by a successful party. Under section 20 of the Arbitration Act, Chapter 5:01, an award or an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect and in such a case a judgment may be entered in terms of the award.

TT has enacted the Arbitration (Foreign Arbitral Awards) Act 1996, which gives effect to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Final awards are enforceable in

TT and are not impeachable or examinable on the merits, whether for fact or law, subject to certain exceptions.

Anti-corruption legislation

TT has enacted the full gamut of anti-corruption legislation including the Prevention of Corruption Act (PCA), Chapter 11:11; the Proceeds of Crime Act, Chapter 11:27; the Integrity in Public Life Act (IPLA), Chapter 22:01; the Mutual Assistance in Criminal Matters Act, Chapter 11:24; and the Freedom of Information Act (FOIA), Chapter 22:02. TT is not a party to the OECD Convention on Combatting Bribery. Of particular interest to a foreign investor would be:

- the PCA which makes certain transactions involving agents corrupt and provides for punishment of such corrupt transactions. Section 3 of the PCA makes certain actions in public office an offence. In particular section 3(2) makes it an offence for any person whether by himself or herself or in conjunction with any other person, to corruptly give, promise or offer any gift, loan fee reward or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to, reward for or otherwise on account of an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, in which the state or a public body is involved;
- the IPLA which provides a code of conduct applicable to a person in public life and to all persons exercising public functions; and
- the FOIA which makes available to the public, information about the operations of public authorities and creates a general right of access to information in documentary form in the possession of public authorities limited by certain exceptions.

There is no anti-bribery legislation in TT.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The key laws are as follows:

- the Petroleum Act, Chapter 62:01 and the Regulations made thereunder (Regulations) together establish the regulatory framework for the grant of exploration and production licences and production sharing contracts (PSCs) for the conduct of upstream exploration and production operations including on land and in the submarine areas. The Act and Regulations also regulate several other types of petroleum operations;
- the Petroleum Production Levy and Subsidy Act, Chapter 62:02 provides for the subsidisation of petroleum products that are sold on the domestic market;
- the Environmental Management Act, Chapter 35:05, which governs the protection, enhancement and conservation of the environment;
- the Occupational Safety and Health Act (OSHA), Chapter 88:08, which governs the safety, health and welfare of persons working in industrial establishments and premises such as vessels, offshore installations, vehicles or movable structures;
- the Petroleum Taxes Act (PTA), Chapter 75:04, which governs the taxation of profits earned by businesses in the course of petroleum operations and the supplemental petroleum tax that is charged on petroleum operations based on the price of oil;
- the Income Tax (in Aid of Industry Act), Chapter 85:04, which governs the allowances on industrial buildings, machinery and plant;
- the Unemployment Levy Act, Chapter 75:03, which governs the imposition of an unemployment levy upon the chargeable income of companies subject to the Petroleum Taxes Act;
- the Income Tax Act, Chapter 75:01, which governs the taxation of personal income accruing in TT;
- the Corporation Tax Act, Chapter 75:02, which governs the taxation of short term capital gains and company profits; and
- the Miscellaneous Taxes Act, Chapter 77:01, which governs the imposition of a green fund levy on the gross revenue of companies and partnerships.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

At present, there is no specific legislative provision that allows for expropriation of a licensee's interest. However, as the terms of a licence may be unilaterally altered by the MEEA, any change in the law may allow for such expropriation.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The government's regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in TT are the Minister of MEEA, acting through the MEEA; the Environmental Management Authority (EMA); and the Occupational Safety and Health (OSH) Agency. The MEEA is primarily responsible for the overall regulation of all energy industry activities.

The EMA, a body corporate established by the Environmental Management Act, Chapter 35:05 of the laws of TT is empowered, inter alia, to monitor compliance with standards criteria and programmes relating to the environment, and take all appropriate action for the prevention and control of pollution and conservation of the environment.

The OSH agency, established by the Occupational Safety and Health Act, Chapter 88:08 is an enforcing body, but the main objective is compliance with the OSH legislation. That means that voluntary compliance will be stimulated and enforcement actions will be used in the case of unwillingness to comply or fatalities, serious accidents and severe breaches of the law.

Petrotrin, which is a state oil company, is subject to the regulatory framework that governs oil and gas exploration and production within TT.

9 What government body maintains oil production, export and import statistics?

The MEEA is responsible for maintaining oil production, export and import statistics.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

The government and certain private persons hold title over petroleum resources. The government is vested with all title and rights to petroleum resources that exist on state land, private land where the subsurface rights have been reserved to the state and all offshore marine areas (inclusive of the sea bed and subsoil situated beneath the territorial waters and the continental shelf of TT). In TT, the original grants of the fee simple in real estate by the state included all subsurface rights not expressly reserved by the state. This gave rise to private petroleum rights being vested in private persons.

There is a legal distinction between surface and subsurface mineral rights. In TT, the mineral estate is a separate interest in land that can be severed from the surface estate. The severance generally occurs in one of two ways; either the landowner sells the minerals and retains the surface, or more commonly, the landowner sells the surface and retains the minerals. If the seller fails to reserve the minerals when selling the surface, the buyer involuntarily receives any mineral interest the seller owned at the time of conveyance.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Exploration and production activity occurs both on land and in marine areas, although over the past 12 years the majority of this activity has been offshore. However, the government has recently begun to encourage onshore exploration as well.

Regulation 30 of the Regulations prohibits exploration from areas in which operations are prohibited by the government for reasons of public interest or security and areas occupied by towns, buildings, roads, cemeteries and other public purpose installations.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

Investors wishing to engage in petroleum operations are required to make applications for licences or production sharing contracts (PSCs) to the MEEA. The terms and conditions of the model PSCs, extracts from which are quoted herein, are subject to negotiation.

An application for an Exploration and Production (E&P) (Public Petroleum Rights) licence or an E&P (Private Petroleum Rights) licence may be made in writing on a prescribed form addressed to the Minister of the MEEA and must contain the prescribed information set out in the Petroleum Act. Pursuant to regulation 9, a fee of TT$500 must be submitted with the application. Upon the grant of the licence, a fee of TT$40,000 is payable by the licensee. Where a person wishes to carry out exploration and production operations involving private petroleum rights in addition to obtaining an E&P (Private Petroleum Rights) licence from the minister, he or she must also obtain the consent of the owner of the private petroleum rights. Arrangements with private owners are normally embodied in the form of private oil mining leases, which provide for the payment of rents and royalties.

Pursuant to section 10 of the Petroleum Act, the state, through the President, may determine that the grant of licences respecting any public petroleum rights or the entry into a PSC shall be subject to a procedure of competitive bidding. This procedure is the preferred method for the grants of interest in petroleum operations by the MEEA as it facilitates transparency and accountability.

Applicants for the grant of such rights are required to submit bids in response to the applicable Petroleum Regulations Competitive Bidding Order for specific blocks. The successful bidder is required to execute an E&P (Public Petroleum Rights) licence with the government or enter into a PSC made among the President of the Republic of TT, the Minister of MEEA and the applicant.

The time frame for the grant of an E&P (Public Petroleum Rights) licence from the date of the application is approximately nine months. The Petroleum Regulations (Deep Water Competitive Bidding) Order 2013, which invited bids for PSCs for certain blocks, provided, inter alia, that successful bids were to be announced within eight months after the date of the publication of the order. The order also provided for the payment of a pre-bid application fee of US$50,000 and a bid application fee of US$60,000, payable on the submission of the bid.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The Petroleum Act and the Regulations do not provide for a right to participate in a licence or in the operatorship of a licence by the government or Petrotrin. However, the applicable Petroleum Regulations Competitive Bidding Order may provide for such right.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Royalties are payable under E&P licences, but the rates are not fixed and vary from company to company. As stated in the TT EITI Report 2010–11, in the case of crude oil, the rate ranges from 10 to 12.5 per cent of the field storage values.

Other payments due to the government include minimum rents in respect of E&P licences, annual licence acreage payments, petroleum impost, production bonuses, PSC signature bonuses and PSC shares of the profits. At present, there is no legislation or agreement that provides that onerous taxes will not be levied in the future.

15 What is the customary duration of oil leases, concessions or licences?

The initial term of an E&P (Public Petroleum Rights) licence does not exceed six years and, subject to the Petroleum Act, such a term may be extended by the minister. The term for which an E&P (Private Petroleum Rights) licence may be granted is 20 years, subject to renewals for successive periods of 20 years.

16 For offshore production, how far seaward does the regulatory regime extend?

For offshore production, the regulatory regime extends to the exclusive economic zone.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

There is a difference between the onshore and offshore regimes, primarily in the area of taxation (see question 35). Crude oil and gas each fall under the definition of 'petroleum' in the Petroleum Act and are, therefore, governed by the same regime governing the right to explore or produce different hydrocarbons. Shale gas has not been discovered in TT.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

A company incorporated under the Companies Act of the laws of TT (the Companies Act) or a foreign company registered as a branch under the Companies Act or local subsidiary of a foreign company may perform exploration and production activities. The incorporation of a company takes approximately one week from the date of approval of the proposed company name. Registration of a branch should take no more than three weeks. The Petroleum Regulations competitive bidding orders made by the minister pursuant to regulation 4 of the Petroleum Act detail the technical, legal, financial and other requirements for the submission of bids that the bidder would be required to satisfy, as well as the factors to be considered in the evaluation of such bids.

19 What is the legal regime for joint ventures?

There is no specific legal regime for joint ventures. The general legal framework established by the Petroleum Act and the Regulations is applicable to joint ventures.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Regulation 43(t) of the Petroleum Regulations provides that where at any time during a licence, an oil reservoir is located between two or more different licensees' blocks, the licensees are required to prepare and submit to the MEEA a joint programme for the working of the reservoir as a unit to facilitate the maximum ultimate recovery of petroleum and avoid unnecessary competitive drilling. Where the parties fail to agree or if the programme submitted is not approved by the minister, the MEEA may prepare its own programme and communicate it to the licensees to be put into effect. The foregoing is also applicable to cross border reservoirs.

21 Is there any limit on a party's liability under a licence, contract or concession?

There is no limit on a party's liability under a licence, contract or concession. Where a consortium is awarded an E&P licence or PSC, the liability thereunder would be joint and several. However, the parties to the consortium may agree among themselves to cap their respective liabilities in relation to the other.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

The provision of parental guarantees is common practice. Generally the parent, which in the opinion of the minister is most financially sound is required to provide the guarantee. Parental guarantees are not unlimited.

Regulations 44 and 78 of the Petroleum Regulations require security deposits for certain minimum expense obligations in respect of E&P (Public Petroleum Rights) licences and additional deposits are required on the granting of certain licences.

The Model Deep Onshore PSC provides for the payment of irrevocable guarantees within seven days after the effective date of the PSC, upon commencement of each subsequent phase of the exploration period and within seven days of approval being granted for an exploration work programme or any additional exploration or appraisal work programme as per the contract for amounts as prescribed therein.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

There is no existing TT legislation that requires the use of a minimum amount of locally sourced goods services and capital. The Petroleum Regulations Competitive Bidding Orders made by the minister have provided that bid proposals provide for the maximum utilisation of services and facilities available in TT in both exploration and production operations under the PSCs. Additionally the model PSCs published by the MEEA provide extensively for local content obligations on the part of the operator including compliance with the Local Content and Local Participation Framework for TT.

At present, moral suasion is relied upon by the MEEA to procure compliance with local content obligations. In practice, failure to comply is identified and notified to the operator by representatives of the MEEA orally, and in writing where remedial action is not taken. The MEEA has stated that compliance rating currently exceeds 90 per cent.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

The Model PSCs on the MEEA's website outline the following local content requirements:

- to comply with the government's Local Content Policy in force and as modified from time to time;
- to maximise to the satisfaction of the minister the level of usage of local goods and services, businesses, financing and the employment of nationals of the Republic of Trinidad and Tobago;
- to ensure that subcontracts are sized, as far as it is economically feasible and practical to match the capability (time, finance and manpower) of local enterprises and shall manage the risk to allow their participation;
- to provide to the minister a list of all projects to be undertaken as well as all goods and services that are required for the conduct of petroleum operations. The minister and contractor shall agree on a list of those projects and goods and services which shall be published in at least two local newspapers and on the ministry's website;
- to ensure that all tenders are to be advertised, evaluated and awarded in TT unless otherwise approved by the minister;
- to give equal treatment to local enterprises by ensuring access to all tender invitations and by including high weighting on local value added in the tender evaluation criteria;
- to give assurance to local enterprises in respect of prompt payment for goods and services actually provided to the contractor and its subcontractors, both foreign and local;
- to ensure the development of people by imparting to nationals technology and business expertise in all areas of energy sector activity;
- to ensure that nationals are selected and trained consistently with contractors' performance standards in relation to energy sector activities;
- to ensure that the development of people in key areas allow nationals to take more value-added, analytical and decision-making roles in certain technical managerial and professional areas; and
- to maintain records to facilitate the determination of the local content of expenditure incurred in respect of petroleum operations. These records shall include supporting documentation certifying the cost of local materials, labour and services used and shall be subject to audit by the minister.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Regulation 28 of the Petroleum Regulations provides that unless otherwise stated in the licence, government consent is required for the assignment or transfer by a company of its interest in a licence. The application for consent to assign or transfer is made to the Minister of MEEA accompanied by a fee of TT$100. In addition, the model deep onshore PSC includes provisions for the assignment and transfer of the contractor's interest subject to the approval of the Minister of the MEEA.

The model PSCs also provides that a change of control of the contractor requires the approval of the MEEA. An entity or entities comprising a contractor is required to apply for consent at least 90 days before the proposed effective date of the transfer, which application must include evidence to the Minister of the financial and technical and technical competence of the transferee with a valuation and all material terms of the transfer.

The Petroleum Act makes no provision for the reservation of pre-emptive rights for the government.

26 Is government consent required for a change of operator?

Yes.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

Yes, such fees as prescribed by regulation 28 of the Petroleum Regulations or as may be negotiated under the PSC.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The Environmental Management Act and the Certificate of Environmental Clearance (Designated Activities) Order (Order) made thereunder, the Petroleum Act and the Regulations and OSHA and the Regulations thereunder are the primary laws and regulations that govern the abandonment and decommissioning of oil and gas facilities and pipelines.

The decommissioning or abandonment (inclusive of associated work) of a facility for the extraction or production of crude oil or production of associated gas or condensates is classified as a designated activity under the Order and requires the issue of a Certificate of Environmental Clearance (CEC) from the EMA prior to the conduct of such activity. The EMA, in considering the application, may require an Environmental Impact Assessment.

The EMA relies chiefly on civil proceedings for enforcement but creates a number of serious criminal offences.

Under sections 59 and 63 of OSHA, the prior approval of the Chief Inspector of the OSH Agency must be obtained before the commencement of the decommissioning or abandonment works. In addition, the licensee and contractor is required to comply with the safety and health obligations imposed on an employer under the OSHA in the conduct of such works. Contravention of the OSHA may result in the imposition of a fine or imprisonment, or both. Proceedings may also be commenced against certain officers of the company for the commission of an offence.

The Petroleum Taxes Act, Chapter 75:04 provides an allowance for decommissioning or abandonment costs, which can only be claimed in the year in which the work in respect of the decommissioning or abandonment was actually performed.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

Regulation 78 of the Petroleum Regulations expressly provides for the payment of security deposits upon the grant of certain licences, the whole or part of which is returned to the licensee upon the discharge of its obligations as certified by the minister.

The Model Deep Onshore PSC requires that the contractor pays US$0.25c per barrel of oil equivalent produced into an account in the name of the minister and a per unit of production assessment as prescribed by the contract into that account. Not later than five years before the earlier of the scheduled expiry of the term of the contract or the contractor's anticipated termination of production of a field or of operation of a pipeline, the contractor is required to submit for the minister's approval a proposed abandonment programme and budget covering all installations and pipelines. If the approved budget is less than the value in the escrow account, the contractor must pay the difference based on a per unit of production assessment.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The Petroleum (testing, storage, etc) Regulations prescribe the regulations for the storage and transport of crude oil and crude oil products within TT. Guidelines have been developed by the MEEA for the transportation of crude oil and crude oil products by road tank wagon.

The MEEA is the chief regulator of all modes of transport of petroleum by pipeline, marine vessel and road tank wagon supported by the OSH Agency, the Maritime Services Division and the Ministry of Transport respectively.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

Regulation 3(1) of the Petroleum Regulations provides for, inter alia, a pipeline licence and transportation (other than by pipeline) licence. to obtain these licences an application for same must be made in writing addressed to the minister in accordance with section 6 of the Petroleum Regulations. The contents of the application include:

- the name, nationality, place of business and nature of the business of the applicant; and
- the type of licence for which the application is made.

In relation to the application for a Pipeline Licence for the installation and operation of a new truck pipeline, the Regulations specify certain technical requirements that must be submitted. An application for a Pipeline Licence is only made where the area in which the pipeline is to be laid is not already covered by the applicant's E&P Licence or his Refining Licence. In addition a person constructing a pipeline for transporting petroleum or petroleum products must apply to the Minister for permission to carry out a survey for the purpose of laying the pipeline.

The requisites for obtaining a permit or licence for transporting crude oil are an E&P licence, a PSC, a farm-out licence or lease operatorship licence. For the transportation of refined crude oil products, a marketing licence is required; registration of a road tank wagon is required where transport is by road and a pipeline licence is required where transport is by pipeline.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

The MEEA is the primary regulator responsible for establishing and enforcing health, safety and environment requirements applicable to oil and gas facilities. Regulations 42, 43 and 92 of the Petroleum Regulations amply describe those requirements, which include the approval by the MEEA of all drilling rigs, platform pipelines and wells. In general, the MEEA requires petroleum operators to adhere to internationally accepted codes, standards, recommended practices and procedures. OSHA and the EMA are also critical agencies, which support the MEEA's mandate to regulate petroleum operations. Approval of other agencies such as the Fire Services Department must also be obtained.

OSHA is the principal TT legislation regulating health and safety in the workplace. It places statutory duties on all employers inclusive of employers in the petroleum sector to ensure, as far as is reasonably practicable, the safety, health and welfare at work of all its employees.

OSHA and the Regulations made thereunder are administered through the Occupational Safety and Health Authority. Section 69 of the OSHA establishes the Occupational Safety and Health Agency (OSH Agency), an enforcing body with legal powers of access to every industrial establishment to undertake investigations and commencement of prosecutions in the Industrial Court of TT (Industrial Court), or in specific cases, the Criminal Court.

Under OSHA, the Industrial Court may impose fines of up to TT$20,000 or in the event of critical injury, occupational diseases or death, TT$100,000 or an amount equivalent to three years pay of that person, whichever is greater. For summary offences for which no penalty is expressly provided, the Magistrates Court may impose a fine of TT$20,000 and imprisonment for one year, and if the offence is continued after the conviction, there is a fine of TT$10,000 for each day on which the offence continues

The conduct of certain oil-related activities, including the exploration for crude oil, the establishment, modification or expansion of a pipeline, gasoline stations, and certain decommissioning and abandonment activities, require the issue of a CEC from the EMA.

In practice, multinational companies that conduct petroleum operations in TT have established health, safety and environment standards, which are followed.

Companies are required to submit investigative reports as well as statistical records of HSE incidents to MEEA, OSHA and EMA.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The MEEA approves the use of chemicals in the energy sector and issues requirements related to handling and emergency response. The OSHA also places certain obligations on an employer with respect to the storage handling usage and disposal of hazardous chemicals. The OSH Agency is the government body responsible for this regulation. Section 47 of the EMA also sets out record-keeping and monitoring requirements in relation to the handling of hazardous substances.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

There are no legislated government standards applicable specifically to oil industry labour. A foreign national wishing to work in TT must apply for a work permit through the Minister of National Security. Work permits are issued only to those who possess skills or expertise not available in TT.

There is no requirement under TT law for the employment of a minimum amount of local labour.

Once it has been ascertained that an individual has the right to work in TT, they also have the benefit of the Equal Opportunities Act, Chapter 22:03, which provides, inter alia, that employers are prohibited from discriminating against them on various grounds including race. The scope of protection includes the management of recruitment, terms of employment or engagement, access to job opportunities and benefits and termination. If an employer contravenes the act, the Equal Opportunity Tribunal may make such declarations, orders and awards of compensation as it deems fit.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Generally, companies engaged in business activities in TT are subject to corporation tax at a rate of 25 per cent.

Companies engaged in the downstream sector are subject to corporation tax at a rate of 35 per cent.

Companies engaged in upstream operations in TT are subject to a special fiscal regime, principally governed by the PTA.

The Board of Inland Revenue wields tax authority.

Overview of taxation in the upstream sector	
Category of tax	**Rate of Tax**
Petroleum profits tax	50 per cent of chargeable profits
Petroleum profits tax (deep-water blocks)	35 per cent of chargeable profits
Unemployment levy	5 per cent of chargeable profits (before losses brought forward)
Supplemental petroleum tax	Rates based on weighted price of crude oil prices
Green fund levy	0.1 per cent of gross sales or receipts
Branch profits tax	5 per cent on deemed distribution of profits
Royalties	Crude Oil: 10% – 12.5%Natural Gas: TT$0.015/mscf – 15% (Subject to provision of exploration and production licence)
Petroleum production levy	Lower amount of either 4 per cent of income from crude oil for producers of more than 3,500 bopd or share of subsidy
Petroleum impost	Share to defray expenses of Ministry of Energy

Tax incentives

The tax incentives include:

- deepwater uplift: 140 per cent uplift of capital expenditure incurred on exploration wells in a deep water block ('deep water block' means 50 per cent or more of a licensed or contract area that lies in deep water (submarine area), which has a water depth greater than 400 metres),
- deep horizon uplift: 140 per cent uplift of capital expenditure incurred on drilling of exploration wells in deep horizon on land or in a shallow marine area (1 January 2013 to 31 December 2017) ('exploration wells in deep horizon' means any exploration wells drilled at and beyond a true vertical depth of 8,000 feet on land or 12,000 feet in a shallow marine area);
- heavy oil allowance: the capital expenditure on heavy oil (crude oil of 18º API or lower). Such projects are entitled to 60 per cent allowance in the first year and 18 per cent in each of the next five years;
- dry hole expenditure: expenditure incurred on a dry hole (ie, a well that was drilled but was non-productive) may be expensed (ie, 100 per cent) in the year in which it is plugged and abandoned;
- workovers and side tracks: expenditure incurred on workovers (ie, remedial works performed to make an existing well productive or to increase production levels) and qualifying side tracks (as defined by MEEA) may be expensed (ie, 100 per cent);
- signature and production bonuses: signature bonuses are amortised and written off over five years on a straight-line basis and production bonuses are expensed when payable; and
- tax losses: accumulated tax losses may be carried forward and offset against future profits for the purposes of petroleum profits tax but not unemployment levy. Ring-fencing provisions of the PSC must be honoured.

Tax incentives/supplemental petroleum tax (SPT) rates			
Weighted average crude price (US$/bbl)	**Marine**	**New field Development**	**Land and deep-water development**
0 – 50	zero per cent	zero per cent	zero per cent
50.01 – 90	33 per cent	25 per cent	18 per cent
90.01 – 200	SPT rate = base SPT + 0.2 per cent x (P – US$90)		
200.01 and over	55 per cent	47 per cent	40 per cent

Sustainability incentive

Twenty per cent discount on the rate of SPT applicable to mature oil fields (25 years and older) or small oil fields (production of 1,500 barrels of oil per day or less) as certified by the MEEA.

Investment tax credit

Twenty per cent of qualifying capital expenditure applicable to development activity in mature marine oil fields and mature land oil fields or acquisition of machinery and plant for use in approved enhanced recovery projects approved by the MEEA.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

There is no mandatory price-setting regime for crude oil. There is a mandatory price-setting regime for crude oil products established by section 31 of the Petroleum Act. It provides that the Minister with the responsibility for the MEEA, after consultation with the Minister of Finance and the Economy, is authorised to fix the prices or the basis for determining the price at which petroleum products may be disposed of or are to be deemed to have been disposed of by the refining business of any person to the marketing business of such a person or any other person for disposal and use in TT.

The minister may also, by order, fix the price or the basis for determining the price at which petroleum products may be sold by a person carrying on marketing business, by a marketing licensee or by any other person carrying on a business of dealing in petroleum products for use in TT.

A person who contravenes section 31 is liable, on summary conviction, to a fine of TT$15,000 and, in the case of a continuing offence, to a further fine of TT$300 for each day during which the offence continues after conviction.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Fair Trading Commission, established by the Fair Trading Act No. 13 of 2006 (FTA), is empowered to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products. Part 111 of the FTA, which controls certain mergers, anti-competitive agreements and monopolistic behaviour, is not yet in force.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

There is no express provision under the FTA that provides for the procuring of a government determination that a proposed action does not violate any anti-competitive standards.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

TT is a signatory to a number of international treaties that affect TT regulation of petroleum activity. Among the most important are the 1958 Geneva Convention on the Continental Shelf and the 1982 United Nations

Update and trends

A media release from the MEEA in March 2015 stated that the MEEA expects that oil production would increase by just over 4 per cent in the first quarter of 2015 compared with the corresponding period in 2014. Oil production has been in decline since 2006 and that trend continued to 2014 when the country recorded a minor increase in oil production. The MEEA is, therefore, pleased to see this carry over into 2014. The MEEA is also happy with the continuation of the drilling and investment schedule for 2015 despite lower oil prices. In the past five years it has been government policy to incentivise upstream companies to increase exploration and developmental drilling. This was achieved mainly through amendments to the fiscal regime that governs the energy sector.

The Minister of Energy and Energy Affairs, the Honourable Kelvin Ramnarine, recently stated in a newspaper article that TT's new energy economy consists of four themes:

- deepwater oil and gas production;
- the development of our significant reserves of heavy oil;
- the commercialisation of cross-border reserves with Venezuela; and
- the use of enhanced oil recovery techniques such as carbon dioxide flooding.

Convention on the Law of the Sea, which together set limits for a state's territorial sea and continue to govern TT's access to its continental shelf.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

There are special requirements on the acquisition of oil related interests by foreign companies. Section 23 of the Petroleum Act requires that a non-resident company prior to the grant of a licence and for the duration thereof establishes and maintains an office, place of business, branch or agency in TT for the purpose of conducting such petroleum operations as are authorised by the licence.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Under TT law, cross border transactions of this nature are not governed by any specific legislation or rules.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

According to the Department for Energy and Climate Change (DECC), over 3 billion tons of oil have been produced from the UK continental shelf (UKCS) to date. Production from the UKCS peaked in 1999, reaching 137 million tons, although there has been a general decline since, with production falling by 6 per cent per annum on average. Over the past three years, production has fallen by 38 per cent, but with the combination of new field start-ups and fields coming back on-stream, it is expected to begin picking up in 2014. In 2005, the UK became a net importer of crude oil for the first time since the early 1990s. Estimates of the remaining hydrocarbons range from 10 to 24 billion barrels of oil equivalent (boe). In 2014, the industry produced 1.42 million barrels of oil and gas equivalent per day, 1.1 per cent less than in 2013. This represents the best year on year performance in 15 years.

During 2014, 126 development wells were drilled (comparable in number to 2013) together with only 14 exploration and appraisal wells. This represents a significant decline on 2013 during which 44 exploration wells were drilled.

The UK has the fourth-largest total refining capacity in the European Union and some of its six crude oil refineries are among the largest in Europe. The refining business, however, has suffered from disruptions, the sale of three refineries in 2011, the closure of the Coryton refinery in 2012 and the closure of the Milford Haven refinery in late 2014. As a result, refinery production decreased by 5.2 per cent in 2013 and is expected to fall further pending the release of 2014 data.

In 2014, the industry invested £14.8 billion of capital expenditure (greater than anticipated, largely due to cost overruns on large scale projects and the highest rate of investment for more than three decades) and spent a further £9.6 billion on operating costs. The oil and gas industry in the UK paid more than £3.2 billion in corporate production taxes for the 2014 calendar year and supports the employment of around 450,000 people across the UK.

The Cygnus field development is due to come on-stream by the end of 2015. It is the largest UK gas discovery in the past 25 years and once it enters production it will account for approximately 5 per cent of the UK's total gas production.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

According to statistics published by DECC, oil represents 32 per cent of the UK's energy usage, natural gas 36 per cent, coal 22 per cent and electricity 10 per cent (consisting of 7 per cent nuclear, 1 per cent renewables and 2 per cent imports). In 2013, oil consumption fell by 5.3 per cent and gas consumption increased by 2.1 per cent. Total UK indigenous production of oil in 2013 was 8.8 per cent lower than in 2012, with natural gas production 6.2 per cent lower. Although UK imports of oil and oil products decreased by 2.3 per cent in 2013, the UK became a net importer of petroleum products for the first time since 1984 with net imports of 2 million tonnes. In 2012, the UK had a net export of 1.1 million tonnes. In 2013, gross imports of natural gas continued to be greater than gross production and net imports of natural gas were 5.1 per cent higher than in 2012. Gas exports were around 25 per cent lower than in 2012, and demand for gas decreased by 0.8 per cent, with the fall in gas demand for electricity generation being offset by the higher domestic demand. Gas and oil used for electricity generation decreased by 6.8 per cent and 22.6 per cent respectively in 2013, reflecting the higher renewables and nuclear generation as well as higher net imports from France.

In the domestic sector, sales of gas were 2.5 per cent higher, largely as a result of the colder weather in the first part of the year. Dependency on imported oil and gas is estimated to have increased to 47.9 per cent in 2013 (from 26 per cent in 2009) and is expected to rise to 64 per cent by 2025 (assuming production declines at an annual rate of 5 per cent).

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The Energy Act 2010, which became law in April 2010, implements some of the key measures required to deliver DECC's low carbon agenda. It includes provisions for delivering a programme for carbon capture and storage and for implementing mandatory social price support. It also introduces a number of measures aimed at ensuring that the energy markets are working fairly for consumers and are delivering secure and sustainable energy supplies. However, it was the Energy Act 2008 that enshrined the UK's present policy for the energy sector. The primary aim of the government in passing this Act was to tackle climate change, reduce carbon dioxide emissions and ensure secure, clean and affordable energy. The Energy Act 2008 also provided for a regulatory framework for offshore gas storage, introduced changes to the offshore oil and gas decommissioning regime and extended third-party access to upstream oil and gas infrastructure. The government has, over a number of years, encouraged smaller companies to apply for licences in the UKCS and has, through initiatives such as the fallow acreage initiative and the Code of Practice on Access to Upstream Oil and Gas Infrastructure on the UKCS (ICOP), made a concerted effort to maximise recovery of oil from the UKCS. This policy was given further standing when the Energy Act 2011 was enacted, providing for the secretary of state to enforce access to upstream infrastructure on behalf of an applicant. Since the publishing of the Wood Review there has been a further shift in government policy toward maximising the recovery of hydrocarbons from the UKCS through the government entering into consultation with the industry. In addition, the Climate Change Act 2008 introduced the world's first long-term legally binding framework to reduce greenhouse gas emissions and set carbon budgets. Separate additional legislation, the Climate Change (Scotland) Act 2009, is also in place. Also of relevance in terms of greenhouse emissions are the Greenhouse Gas Emissions Trading Scheme Regulations 2012, which implement the EU Emissions Trading Scheme in the UK and the more recently introduced mandatory reporting requirements for quoted companies incorporated within the UK to disclose details of their GHG emissions in their directors' report or in a stand alone strategic review. In addition, the Energy Savings Opportunity Scheme Regulations (ESOS) 2014, which implements article 8 of the Energy Efficiency Directive 2012/27/EU, has been introduced. ESOS requires relevant undertakings (as defined in the legislation) and their corporate groups to undertake mandatory energy assessments by 5 December 2015 and every four years thereafter if they continue to qualify.

4 Is there an official, publicly available register for licences and licensees?

DECC maintains an online register of all existing licences and their respective licensees, which is publicly accessible. However, DECC does not accept any responsibility for the accuracy of the information on its website, and does not accept any liability as a result of reliance upon such information. There is a process of checking the accuracy of the published data upon lodging any assignment on the Oil and Gas Portal.

5 Describe the general legal system in your country.

The legal system in England and Wales, Scotland and Northern Ireland is one of the oldest and most established legal systems in the world. As such, many international agreements are governed by English law. The legal system is based on a well-established common law system that has been developed through the years by the courts and the creation of case law, which sets out tests and interpretative procedures that should be followed when determining the meaning of contracts. There is a well-developed appeals procedure from the High Court, to the Court of Appeal and finally to the Supreme Court, which is also the final appeal court in many other jurisdictions around the world. The judiciary maintains its independence from the government and, as such, is able to uphold the rule of law at all times.

The Bribery Act 2010 came into force on 1 July 2011 and created a number offences including:
- a number of general bribery offences;
- the offence of bribing a foreign public official; and
- the offence of a commercial organisation failing to prevent bribery on its behalf (this applies to any organisation that has business operations in the UK).

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The Petroleum Act 1998 governs oil and gas exploration and production activities in the UK. This Act vests ownership of petroleum in the UKCS in the Crown and empowers the Secretary of State for DECC to grant licences for the exclusive right to search for, bore for and extract petroleum in the area covered by the licence. Licences are acquired through competitive licensing rounds held each year by DECC. A company will make (either by itself or as part of a joint venture) an application for a specific area. Licences may also be acquired through asset transfers between companies and the consent of DECC is required prior to any licence assignment. The conditions of a licence (known as 'model clauses') are set out in secondary legislation, which for existing offshore production licences are the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008. The model clauses set out in detail the conditions for the licence, including term, licence surrender, record-keeping, working obligations, appointment of operator, measurements and pollution. In awarding licences, DECC must also comply with the Hydrocarbons Licensing Directive Regulations 1995, which set out additional rules that EU member states must follow when issuing petroleum licences.

In addition to the regulatory requirements, there are a number of voluntary industry-based codes of practice to which many UKCS licensees have signed up to. ICOP is intended to facilitate access by a third party to oil infrastructure in the UKCS such that the parties involved can agree fair and reasonable terms. The fallow acreage initiative places pressure on licensees to deliver activity on old licences where companies have not been active for some time or relinquish licences in order for the acreage to be offered to other companies. With respect to transfers of licences, the Commercial Code of Practice establishes an agreed framework to minimise resources spent on negotiations and promote positive commercial behaviour.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

At present, there are no legislative provisions that allow for expropriation of a licensee's interest, however, as the terms of a licence may be unilaterally altered by the government, any change in the law may allow for expropriation of a licensee's interest.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

DECC is the government authority primarily responsible for the development and regulation of the oil and gas industry in the UK. DECC was established in October 2008 following a transfer of powers from the Department of Business Enterprise and Regulatory Reform. DECC administers oil and gas regulatory activities, including licensing, development consent, fiscal policy, environmental policy and decommissioning. Other regulatory bodies include the Health and Safety Executive (HSE), which is responsible for health and safety, and includes the Hazardous Installations Directorate, which is responsible for regulating and promoting improvements in health and safety across the offshore oil and gas sector. From 1 April 2015, the Oil and Gas Authority (OGA) became the regulatory authority responsible for licensing in the UK.

9 What government body maintains oil production, export and import statistics?

Responsibility for oil production, export and import statistics is with DECC. The Office for National Statistics is the central data source, where the statistics are produced to a high professional standard.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

The Crown (through the Petroleum Act 1998) holds all title and rights to oil reservoirs within the UK and its territorial waters. DECC (on behalf of the Crown) has the power and discretion to grant licences to persons deemed fit to search for and extract oil and to further distribute and sell such oil in the market.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

UK oil exploration and production activity is predominantly conducted offshore. Such activities are regulated by a licensing regime. Each licence covers a particular area, and there are separate licensing regimes for onshore and offshore exploration and production activities. Such activities (whether onshore or offshore) can be restricted for environmental, conservation or military reasons. DECC is required to carry out a strategic environmental assessment on areas proposed to be licensed to examine the impact of such activities on the environment.

Onshore exploration and production activity is also subject to additional environmental and planning legislation. The planning policy in England and Wales is currently uncertain as to whether certain areas (such as areas of outstanding natural beauty and world heritage sites) will wholly be off-limits.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

DECC is the government body responsible for the regulation of oil exploration and production activities in the UK. However from 1 April 2015, many of regulatory functions of DECC were passed to the OGA, a newly created Executive Agency of DECC. This was in line with recommendations made by the Wood Review. Regulation is by a licensing regime rather than a production sharing arrangement. Applications for a licence are made (either individually or through a joint venture) to DECC as part of a formal annual licensing round that is advertised online and in the European Journal. All applications are made in a prescribed form and companies applying for a licence must be registered in the UK, either as a company or as a branch of a foreign company (see question 18).

The timing for the application will vary depending on the size of the licensing round. In the simplest case (out-of-round with no environmental complications) it can take less than three months from the application. However, in a large licensing round with many licences and applicants, some of which are subject to Appropriate Assessment (defined below), it can take up to two years. The 2012 licensing round (27th Seaward Licensing Round) took six months from the application closing date to offer most of the awards and eight months to offer awards for applications subject to Appropriate Assessment.

'Appropriate Assessment' is the additional environmental assessment procedure required under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended) for licence blocks containing Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). In the 28th Seward Licencing Round (announced November 2014), there are currently 94 blocks that will be subject to further environmental assessments, increasing the time before any offer is made in relation to these blocks.

At present, there are two types of offshore licence awarded by DECC: the 'exploration' licence and the 'production' licence. Under a seaward petroleum exploration licence, seismic surveys and shallow drilling can be performed in acreage not already licensed. Other parties may hold an exploration licence over the same area, and it is therefore a non-exclusive licence. Under a seaward petroleum production licence, the licensee is granted the right to search for, bore for and extract hydrocarbons from the UKCS in the area prescribed under the terms of the licence for the full life of the field from the exploration phase and development to decommissioning.

Three subcategories of production licence exist. The most common of these is the 'traditional licence'. Potential applicants must be able to demonstrate financial, technical and environmental capability in order to be successful. The 'promote' licence (introduced in 2002) is designed to award smaller companies with production rights and allow a two-year period in which to obtain the requisite financial and technical capabilities prior to development. The 'frontier' licence (introduced in 2003) recognises the difficulties in sourcing oil in remote areas of the UKCS (such as the deep waters west of Shetland) and permits screening over a large area to look for a wide range of prospects.

Onshore production is governed by the onshore production and development licence, which follows a similar form to the offshore licences described above.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The government does not have the right to participate and be carried in a licence.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Royalties are no longer payable under a licence. Licences do carry a small annual charge, known as a 'rental', which is due on each anniversary of the date of the licence.

There are no tax stabilisation measures in place, demonstrated in March 2011 when the budget raised tax on oil and gas output from 20 per cent to 32 per cent overnight and more recently lowered them overnight in the March 2015 budget.

15 What is the customary duration of oil leases, concessions or licences?

As previously stated, from 1 April 2015 many of regulatory functions of DECC were passed to the OGA. It will therefore be the OGA that administers licences.

Offshore licences

There are three types of offshore licence (traditional, frontier and promote), and each licence comprises three terms. A licence will expire automatically at the end of each term, unless certain conditions allowing the licensee to advance to the next term have been fulfilled.

Traditional licences

The duration of a traditional licence is split into successive terms of four, four and 18 years. To progress from the initial to the second term, the licensee must have completed a work programme as approved by DECC and relinquished a minimum of 50 per cent of the acreage under the licence. If, during the second term, DECC has approved the development plan and all of the acreage outside that development has been relinquished, the licence may continue into the third term. DECC may exercise its discretion to extend the third term beyond the prescribed 18-year period if production is ongoing.

Frontier licences

The duration of a frontier licence is split into successive terms of six, six and 18 years. By the end of the third year of the first term, the licensee must have relinquished 75 per cent of the licence area. At the end of the sixth year, the licensee must relinquish a further 50 per cent of the remaining acreage. This equates to a total relinquishment of seven-eighths of the original licence area by the end of the initial term. DECC may, in exceptional circumstances, where prospectivity can be demonstrated over more than 25 per cent of the licence area, allow, at its discretion, a licensee to relinquish only 50 per cent of the acreage by the end of the third year. However, the licensee would still need to relinquish all but one-eighth of the original licence area at the end of the initial term, and must have completed the work programme in order to progress from the initial to the second term.

A new type of frontier licence for the areas west of Scotland was introduced in the 26th licensing round announced in January 2010. The new frontier licence differs from the original frontier licence in that the first of its three terms is three years longer. This is in recognition of the particularly challenging nature of the geographical area where it applies and the relative scarcity of geophysical data.

Promote licences

The duration of a promote licence is split into the same successive periods as a traditional licence. However, the licence will expire at the end of the second year if DECC is not satisfied that the licensee has sufficient financial, technical and environmental capacity to undertake the work programme. At the end of the second year the licensee must also decide whether to 'drill or drop', in essence the licensee must make a firm commitment to DECC to drill a well in order for the licence to continue. Having committed to drilling, the licensee then has until the end of the initial period in which to drill.

Onshore licences

The duration of an onshore exploration and development licence is split into successive periods of six, five and 20 years. The licensee must complete the agreed exploratory work programme in the initial term before advancing to the second term. A development plan must then be approved during the second term before progressing to the third production term.

In addition, the Fallow Initiative may apply to certain blocks and discoveries under an older licence. Blocks and discoveries are considered fallow after three years if there has been no significant activity such as appraisal drilling, dedicated seismic acquisition or extended well testing. Ultimately, fallow blocks and discoveries, if not 'rescued', will be relicensed. Since most blocks under older licences have been reviewed, this initiative may now be at an end.

16 For offshore production, how far seaward does the regulatory regime extend?

The regulatory regime extends to the UK's territorial seas and the UKCS. The UK territorial sea extends from the low water mark (established by the Territorial Waters Order 1964) for 12 nautical miles. The designated area of the UKCS has been redefined over the years through a series of designations under the Continental Shelf Act 1964, following boundary agreements with neighbouring states. The Continental Shelf (Designation of Areas) Order 2013 replaces two previous orders and designates the areas of the continental shelf within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources are exercisable. The Order designates the area of the United Kingdom's continental shelf resulting from the treaties with Belgium, Denmark, France, Germany, Ireland, the Netherlands and Norway. The area designated includes the exclusive economic zone, declared around the United Kingdom on 31 March 2014 under the Marine and Costal Access Act 2009 pursuant to the Exclusive Economic Zone Order 2013, together with any areas of continental shelf beyond 200 nautical miles from the United Kingdom's baselines.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

The onshore and offshore regimes are historically similar, although there are distinctions in the means of designating licence areas. Offshore uses a 'grid system' for the designation (quadrants of 1 degree latitude by 1 degree longitude, split into 'blocks' of 25km by 10km).

Onshore does not use a grid system, because the blocks are not regular and are much smaller than offshore. In addition to the regulatory regime, onshore operations must also adhere to the usual rules of Scots land law in Scotland and English land law in England and Wales (as exemplified by *Bocardo v Star Energy*, where, despite having obtained the licence to get petroleum, nominal damages were awarded against an oil company for its failure to obtain landowner consent to drill diagonally through strata beneath the land). The *Bocardo v Star Energy* case has now largely been circumvented by the Infrastructure Act 2015, which provides a right to drill through deep level land (at least 300 metres below the surface). Crude oil, gas and shale gas all fall under the definition of 'petroleum' in the Petroleum Act 1998 and are, therefore, governed by the same regime.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Companies may only perform exploration and production activities in the UK under a licence. Applications for a licence are made (either individually or through a joint venture) to DECC as part of a formal annual licensing round.

The licensing round is advertised online and in the European Journal. All applications are made in a prescribed form and companies applying for a licence must be registered in the UK, either as a company or as a branch of a foreign company, the timing of which is not overly onerous. DECC considers each application on a case-by-case basis and will require a company to demonstrate its financial worthiness (that it is able to finance its share of the relevant work programme for the licence in question). With regard to technical capability, non-operators are not required to demonstrate a high level of technical expertise.

Companies wishing to be appointed as operator are considered against additional criteria including previous experience, technical expertise and environmental awareness.

19 What is the legal regime for joint ventures?

Companies generally engage in oil activities through unincorporated joint venture associations. The companies will normally enter into a joint operating agreement (JOA) to govern contractual relations between parties to the joint venture. An industry standard JOA has been produced by Oil & Gas UK (the oil industry representative body), which is often used as a template by parties and then tailored to a specific situation. The JOA will cover such matters as the appointment of the operator, the percentage interests of each of the parties, and govern the day-to-day operational activities carried out by the operator.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Where a field is situated in two or more adjacent blocks that are licensed to different companies, DECC will require, prior to approving a field development programme, that the companies show that recovery of oil will be maximised and that competitive drilling is avoided. In most cases, this will require a unit operating agreement (UOA) to be entered into by the companies. The terms of the UOA will be heavily negotiated, especially provisions relating to the parties' participating interests, the selection of the operator and the ability to require a re-determination of the field. In the case of cross-border unitisation agreements, these issues may be compounded by country differences on matters such as taxation and export preferences. The government has, in the past, been willing to assist licensees with resolving cross-border issues on an intergovernmental level.

21 Is there any limit on a party's liability under a licence, contract or concession?

The liability of a licensee under a UKCS licence is joint and several. It is the joint operating agreement that splits liability between the parties in proportion to their beneficial interest in the licence. There is no limit on liability contained within the relevant statutes. However, any claim for damages must be reasonably foreseeable.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

As a general rule, DECC requires a parent company guarantee (PCG) whenever the licensee is dependent upon the financial support of its parent company in order to meet its licence obligations.

A PCG is also required from the new parent company if, prior to the acquisition, sufficient value had been transferred out of the licensee to render it unable to meet its licence obligations without the financial assistance of the new parent.

Whether the parent company is the immediate parent or the ultimate parent company will depend upon where the financial support for the licensee to meet its obligations under the licence comes from. Such liability of the parent company under the PCG will mirror that of the licensee that it is supporting.

No specific security deposits are required in respect of work commitments; however, any PCG provided is likely to cover any work commitment.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

There are no local content requirements in the United Kingdom.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

None.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Government consent is required for assignments of a licence or for a change of control of the licensee. The licensee shall not, except with the consent of DECC and in accordance with the conditions (if any) of the consent, do anything whatsoever whereby any right granted by the licence becomes exercisable by or for the benefit of another person. DECC operates an e-licence administration system (PEARS: the Petroleum E-Licensing Assignments and Relinquishments System) for the submission of licence assignment applications for offshore production licences. The timing for consent depends on such factors as the complexity of the assignment, the quality of information initially provided by the licensee via PEARS and the number of other applications being processed. In addition, as part of a general drive by DECC towards improvement of the quality of records, each application will be checked for consistency between its starting point and the records of the licence's current position. The first time each licence is implicated in a PEARS application, the user will have to confirm this consistency, or notify DECC via the system about any discrepancies and upload supporting documentation for DECC to consider, and, if appropriate, implement a correction, which can also affect timing. DECC generally aims to process a straight-forward case in 10 working days (although this cannot be guaranteed). Production operatorship and financial checks in particular can take longer than this; the overall processing time will increase to 25 to 30 days where (straightforward) financial checks are involved. Once consent is granted the licensee must submit a scanned copy of the implementing agreement.

The model clauses provide that the secretary of state may revoke the licence on a change of control, so obtaining consent is paramount. When considering an application for a change of control, DECC's policy requirement is that the licensee must demonstrate that the change will not prejudice its ability to meet its licence commitments, liabilities and obligations. Where a licensee is dependent upon the financial support of its present corporate parent to enable it to meet its licence obligations and will become reliant upon the financial support of its new corporate parent, DECC will require a parent company guarantee from the new corporate parent to replace any existing parent company guarantee that may have been issued. The existence of this power can result in a request for comfort that the secretary of state will not exercise it. DECC is generally willing to consider such requests.

There are no pre-emptive rights reserved to the government.

26 Is government consent required for a change of operator?

The approval of DECC is required prior to the appointment of an operator to ensure the entity has the financial and technical capability to act as operator. The government does not have the right to participate in the operatorship. Approval is sought by submitting the operator appointment via PEARS.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

There are no specific fees or taxes on a transfer or change of control, aside from any land and buildings transaction tax (in Scotland) or stamp duty land tax (in the rest of the UK) that may be payable on an asset transfer that includes facilities situated above the low water mark. Stamp duty will be payable by the purchaser on a transfer of any shares in a company. DECC will charge certain fees to process the relevant application via PEARS.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The domestic UK legislation has taken on board a number of international and regional treaties, including UNCLOS (Law of the Sea Convention) article 60(3), IMO Guidelines and Standards 1989 and 1992 OSPAR Convention (Recommendation 2006/05 was adopted by the 2006 OSPAR Commission, which introduced a management regime for offshore drill cuttings piles).

Under section 29 of the Petroleum Act 1998, the secretary of state is empowered to serve notice on a wide range of persons indicating that those persons are jointly and severally liable to carry out an approved decommissioning programme. In the first instance this would include parties to joint operating agreements for installations and owners for pipelines. The notice will either specify the date by which a decommissioning programme for each installation or pipeline is to be submitted or, as is more usual, provide for it to be submitted on or before such date as the secretary of state may direct. The primary liability rests on the parties to the asset at the time of decommissioning. The secretary of state may withdraw a section 29 notice, for example, on the sale of an asset; this right used to be automatic, but is now less so. However, the secretary holds a significant 'clawback' power under section 34, whereby the liability net can be expanded to include anyone on whom a section 29 notice could have been served at any time after the first section 29 notice is served (ie, former owners – even those who have previously had the section 29 notice withdrawn – and affiliates of such owners).

Parties agree to provide security for their share of decommissioning liabilities: as part of a sale and purchase, as part of a field agreement with partners or as part of an agreement with DECC/government (relatively rare). The amount of security, which is recalculated each year, is based on an estimate of the decommissioning cost. The usual form of security is a letter of credit, but a suitably rated parent company guarantee can also be provided. The required rating of the relevant parent company or bank is AA-. The proceeds are paid to a trustee if the licensee defaults or is insolvent or does not renew the credit. A fund is therefore available to meet decommissioning costs.

The potential tax relief available for decommissioning is huge. Therefore, in the 2013 budget the chancellor committed to the introduction of decommissioning relief deeds (DRDs). These deeds provide the oil and gas industry with certainty over decommissioning tax relief on the UKCS, which in turn allows a greatly reduced level of security to be put up by companies for decommissioning (as such security will be calculated on a net tax rather than gross tax basis). The Finance Act 2013 is the enabling Act that brought in the DRDs and enables payments to be made under them. DRDs are now final and the first ones were signed in October 2013. Under these deeds, if the tax relief available were to be reduced in the future, the government would make a compensating payment to the oil and gas company affected. In most situations, it is sufficient for one company in a group to have a DRD and then under the Contracts (Rights of Third Parties) Act all group companies will be covered by that DRD. If an affiliate is to be sold to a group without a DRD, then that affiliate may obtain a separate DRD to ensure coverage.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

The amount of security provided by the licensees is recalculated each year and is based on an estimate of the decommissioning costs. The usual form of security is a letter of credit.

If the licensee defaults, becomes insolvent or fails to renew the credit, then the security is paid to a trustee. There is therefore a fund in place to meet decommissioning costs even if not all of the licensees are able to do so.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

The Energy Charter Treaty (the ECT) requires the UK to take measures to facilitate oil transit across its national boundaries in a non-discriminatory manner and according to the principles of freedom of transit, namely, without distinction as to the origin, destination or ownership of the oil and on the basis of non-discriminatory pricing. All of the UK's neighbours are parties to the ECT. Offshore pipelines require the approval of DECC (a pipeline works authorisation) before going ahead, and in granting approval DECC will have regard to the interests of other users of the sea for the transport of oil as well as the impact on the environment. Transportation of oil by road and rail is regulated by the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 (amended 2011), and is monitored by the Health and Safety Executive. Transportation of oil by sea is regulated by the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996 (amended 2005) and the Merchant Shipping (Dangerous Goods and Marine Pollutant) Regulations 1997. The International Maritime Dangerous Goods Code contains internationally agreed guidelines on the transport of dangerous goods.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

The consent of DECC is required in order to transport oil by pipeline. Transportation of oil by marine vessel and tanker truck must comply with various domestic health, safety and environmental statutes.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

The Health and Safety at Work etc Act 1974 (HSWA) is the principal piece of UK legislation regulating health and safety in the workplace. It applies fully to onshore activities and many of its provisions apply to offshore activities in the UKCS. It is supplemented by a large number of subordinate regulations relating to specific risks, hazards and industries, including a number of offshore-specific regulations, mentioned below. The HSWA imposes a general obligation on employers to ensure, so far as is reasonably practicable, the health, safety and welfare at work of employees and those affected by their undertaking. All employers involved in onshore and offshore work activities, such as third-party contractors, are subject to those general duties and the majority of other health and safety regulations.

The Piper Alpha disaster was seminal in the creation of the present offshore-specific regulatory regime. It is underpinned by the concept of a 'duty holder' (either the owner of a non-production installation or the operator of a production installation) who has overall responsibility for managing risks and hazards on an installation. The cornerstone of this regime is the Offshore Installations (Safety Case) Regulations 2005. It should be noted that as a result of the Offshore Safety Directive (discussed in more detail below), the 2005 Regulations will be replaced in 2015 by the Offshore Installations (Offshore Safety Directive) (Safety Case) Regulations 2015. Slightly confusingly, despite the revocation of the 2005 Regulations, they will continue to apply where provided for by the 2015 Regulations. These Regulations are supplemented by a suite of offshore-specific legislation, which includes:

(i) the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995;
(ii) the Offshore Installations (Prevention of Fire and Explosion and Emergency Response) Regulations 1995; and
(iii) the Offshore Installations and Wells (Design and Constructions, etc) Regulations 1996.

Amendments to (i) and (ii) will be introduced in 2015 also as a result of the Offshore Safety Directive (OSD).

In terms of formal records and documents, the principal requirement on duty holders is the preparation of a safety case for each installation that must be submitted to, and accepted by, the HSE. In addition, any offshore employer (including operators, owners and contractor companies), or any person in control of work premises, must record and report certain work-related accidents in terms of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013. A number of other formal notifications are required in respect of, for example, dangers to the integrity of installations and work on wells where there is substantial risk of unplanned escape of fluids.

The enforcing authority for offshore health and safety matters in the UK is the HSE, Energy Division. In 2014, the Offshore Safety Directive Regulator (OSDR) was created to oversee industry compliance with the OSD (see below). Non-compliance with either the offshore-specific legislation or the HSWA can result in criminal prosecution (punishable by unlimited fines and imprisonment for the most serious offences) or imposition of prohibition or improvement notices. Each breach of the HSWA or its subordinate regulations is a separate criminal offence. There are many 'strict liability' offences, which means that an offence may be committed even where there is no 'guilty mind'. Companies may also be prosecuted for corporate manslaughter in relation to fatal accidents that occur offshore. Any fatality occurring offshore will also be subject to investigation by the police under the Corporate Manslaughter and Corporate Homicide Act 2007, which may give rise to a prosecution and conviction of the organisation of corporate manslaughter. Such cases are prosecuted in the High Court and carry an unlimited fine.

Developments are expected during the course of 2015 in relation to new sentencing guidelines following closure of the consultation in February 2015, of the 'Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines'. The guidelines are applicable to England and Wales only, however a similar approach is expected to follow suite in Scotland. The result of the guidelines will be a very significant increase of the level of fines Imposed for breaches of health and safety.

On 18 July 2013, the new EU Directive on the safety of offshore oil and gas operations came into force as a consequence of the Macondo incident in the Gulf of Mexico. Initially, the European Commission published draft proposals for a regulation to harmonise the offshore health and safety regimes across all 27 member states and Norway. While in many respects the proposed regulation mirrored the UK's world-class 'risk-based' regime, there was concern that it may in fact undermine the UK's existing high standards in some areas. Oil & Gas UK opposed the proposal, and subsequently it was decided that a less prescriptive EU directive would be more appropriate. The OSD was published on 28 June 2013 and sets out minimum requirements to ensure prevention of major incidents and provisions to limit adverse environmental and social consequences where incidents have occurred. Some of the requirements of the OSD include:

- only operators with sufficient technical and financial capacities to remedy possible environmental damage will be allowed to explore and produce oil and gas in EU waters;
- an independent third party must verify the technical solutions proposed by the companies prior to and periodically after the infrastructure installation;
- companies will have to prepare a major hazard report for their installation, before the exploration or production begins;
- independent national authorities will inspect the installation, and in the event that an operator does not comply with the minimum standards, the competent authority will take enforcement action or impose penalties, or both;
- comparable information about the standards will be made available to the public;
- companies will prepare emergency response plans based on their rig or platform risk assessments and keep resources at hand to be able to act immediately;
- oil and gas companies will be fully liable for environmental damage caused to protected marine species and natural habitats;
- EU offshore authorities groups will work together to ensure effective sharing; and
- the Commission will support the promotion of the highest safety standards across the world.

The OSD applies to all offshore regions in Europe and European companies operating outside EU regulated waters, and extends the geographical zone for environmental damage to waters (from 22km offshore to 370km offshore). The transposition of the OSD is in stages: by 19 July 2015, member states must bring into force the laws, regulations and administrative provisions necessary to comply with the Directive; by 19 July 2016, laws, regulations and administrative provisions are to be applied to all owners and operators of planned production installations and operators planning or executing well operations; and by 19 July 2018, member states are to apply the laws, regulations and administrative provisions to existing installations. The Environmental Damage (Prevention and Remediation) (England) Regulations 2015 come into force on 19 July 2015. Similar legislation is being introduced in Wales by the same date. These regulations amend the existing Environment Damage Regulations (England)/(Wales) 2009 and implement article 38 of the OSD, extending the scope of the regime to include marine waters. Scotland has produced similar implementing legislation in draft.

The environmental impact of offshore exploration and production activities is clearly considerable. Obligations arising from various international conventions such as the Convention for the Protection of the Marine Environment of North East Atlantic (OSPAR) have culminated in a number of domestic environmental regulations. The Offshore Chemicals (Amendment) Regulations 2011 and Offshore Petroleum Activities (Oil Pollution Prevention and Control) (Amendment) Regulations 2011 amend, respectively, the Offshore Chemicals Regulations 2002 and the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 for the purpose of making changes to the regulatory framework for offshore chemicals and oil pollution, prevention and control. The key changes are those contained in the Offshore Chemicals (Amendment) Regulations 2011, which ensure that enforcement action can be taken in respect of non-operational emissions of chemicals, such as accidental leaks or spills. Following the 2011 amendments cited above, enforcement action can now be taken against organisations that cause an oil or chemical release outside the terms of the permit, whether or not they are the named operator in terms of the permit. Under the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998, an oil pollution emergency plan (OPEP) must be prepared accordingly and submitted to the DECC for approval. What is required in an OPEP is currently in a state of transition as a result of amendments to the 1998 Regulations to be implemented in July 2015. Among other requirements is the need to provide evidence of financial responsibility. Regulatory approvals and consents are withheld until the OPEP is approved. An oil record book must be maintained at all times.

In addition, the Oil Regulations 2011 extend the scope of the Oil Regulations 2005 so that they cover emissions from pipelines. The Energy Act 2008 (Consequential Modifications) (Offshore Environmental Protection) Order 2010 extended both regimes to installations used for the offshore storage of natural gas, offshore unloading of liquefied natural gas and the offshore storage of carbon dioxide for the purpose of its permanent disposal.

In the event of a significant oil spill the operator, in accordance with its OPEP, would activate its emergency response centre to take appropriate actions to prevent further pollution and implement a response strategy. In the event of an oil leak in UK waters, the liability for all costs lies with the owners of the well. This is an unlimited liability. As a back-up, should the operator default, the Offshore Pollution Liability Association Limited was established to help pay for any clean up and liability costs. The implications of drilling and production-related emissions have seen an increase in regulation in recent years. In particular, since the Gulf of Mexico oil spill, DECC has taken action to double the number of annual environmental inspections of drilling rigs.

There is also a framework of regulations governing offshore atmospheric emissions that relate to the flaring of gas, diesel engines, gas turbines and other 'combustion plant'. A permit is required in order to operate an offshore combustion installation. Subject to transitional provisions, the Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013 revoke the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001. As the Industrial Emissions Directive (IED) (see question 33) provisions in respect of the offshore sector mirror those of the Integrated Pollution Prevention and Control (IPPC), DECC considers that the new 2013 regulations will not place any additional administrative or compliance burdens on offshore operators and any extra obligations (for example preparation of publicly available inspection reports) will be borne by DECC. The 2013 Regulations transpose the provisions of the IED. On land in England and Wales the environmental permitting regime applies to specified activities including certain oil related activities whereas in Scotland and Northern Ireland the Pollution Prevention Control regime applies.

The main enforcing authorities for environment matters in the UK are DECC, the Environment Agency (the EA) in England, Natural Resources Wales (NRW) in Wales, the Northern Ireland Environment Agency (NIEA) and the Scottish Environmental Protection Agency (SEPA). The Maritime and Coastguard Agency (the MCA) is the competent UK authority in terms of counter-pollution measures and response at sea, and the Joint Nature Conservation Committee (JNCC) and Marine Scotland provide advice on environmental sensitivities that may be affected as a result of any oil spill. Both the MCA and JNCC are consulted as part of the OPEP review and regulatory approval process.

Under the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999, prior to extraction, any operator who wishes to carry out certain upstream activities must undertake an Environmental Impact Assessment (EIA), and present a summary of this EIA (in an environmental statement) to DECC. Relevant activities for the purposes of the regulations includes drilling of wells, construction and installation of production facilities and pipelines in the United Kingdom Territorial Sea and on the United Kingdom Continental Shelf.

Developing areas

The Climate Change Act 2008 (CCA) sets targets for the reduction of greenhouse gases (GHGs) for the UK. The provisions of the CCA relating to emissions of GHGs apply to emissions from sources or other matters occurring in, above or below the UK sector of the continental shelf, as they apply to emissions from sources or matters occurring in the UK. Developments may be expected in this area.

The Marine Strategy Framework Directive, implemented in the UK by the Marine Strategy Regulations 2010, requires each member state to develop a marine strategy. This includes steps to protect and preserve the marine environment, prevent its deterioration and prevent and reduce effects in the marine environment. The UK Marine Strategy Part I was published in December 2012. Part II was published in August 2014 and described the UK's marine monitoring programmes to support the targets and indicators for good environmental status. In January this year, Defra published a consultation on proposals for a UK programme of measures to maintain or achieve good environmental status in UK seas by 2020. The government aims to adopt the programme of measures by the end of 2015.

The Marine and Coastal Access Act 2009 provides for greater protection of the marine area and process to designate marine conservation zones. It divides the UK marine areas into marine planning regions with an associated plan authority who prepares a marine plan for the area. It also establishes a Marine Management Organisation for the waters around England and the UK offshore area. The Marine (Scotland) Act 2010 establishes a similar organisation, Marine Scotland, in Scottish waters. As part of the marine strategy, different plans are in the process of being created, which will identify how oil and gas activities are to be dealt with in the appropriate area. Potential risks identified for oil and gas, both now and under future climates, is how infrastructure is sited and designed to take account of present and future climate conditions.

More recent investigative activities in respect of onshore unconventional oil and gas has led to further assessment of applicable regulation and the interactive relationship with a number of regimes including environment, planning, waste and water.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

Health and safety legislation concerned with the regulation of oil and oil products in the downstream market has evolved into a broad framework of general legislation designed to regulate products and hazards across a range of industries. As well as the duties imposed under the relevant hazard-specific legislation (listed below), the manufacturer, supplier or importer of any product or substance will still be required to comply with their general duties under the HSWA (see question 32), which requires that they ensure, so far as is reasonably practicable, that substances produced, manufactured or imported are safe and without risks to health when properly used. Hazard-specific regulations of relevance for the processing, manufacture or distribution of oil and oil-related products include:

- Regulation No. 1907/2006 EC concerning the registration, evaluation and authorisation and restriction of chemicals (REACH);
- the Control of Substances Hazardous to Health Regulations 2002, which place duties on employers and employees in relation to hazardous substances by prohibiting their use in certain circumstances and placing controls on exposure;
- the Control of Major Accident Hazards Regulations 1999, which set out requirements for companies to prepare a plan for the control and containment of major incidents, through consultation with employees and other relevant persons (such as the emergency services) (note that these regulations will be replaced as of 1 June 2015 by the Control of Major Accident Hazards Regulations 2015); and
- the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, which apply to suppliers of dangerous chemicals. The purpose of the Regulations is to protect people and the environment from the effects of chemicals by requiring suppliers to provide information about the dangers and to package them safely. The regulations are to be replaced from 1 June 2015 by European Regulation (EC) No. 1272/2008 on classification, labelling and packaging of substances and mixtures.

As stated above, the enforcing agency for health and safety matters in the UK is the HSE. Breach of the HSWA or any of its subordinate regulations, such as those noted above, is a criminal offence that may be punished by prosecution (with unlimited fines and imprisonment for the most serious offences) or imposition of prohibition and improvement notices. Imprisonment of the company's officers (directors, managers and possibly even offshore installation managers) for up to two years is possible in certain circumstances, as is disqualification of directors.

The activities of the downstream oil sector, including refining, transportation and storage of oil and petroleum, are also subject to considerable environmental regulation. In undergoing these processes, the release of substances into the land, sea or air by a downstream operator or installation requires the issue of a permit or licence from the relevant authority. DECC, the EA, the NRW, the NIEA and SEPA regulate this regime in the UK. The environmental regime is contained within a suite of domestic legislation, including the Pollution Prevention and Control Act 1999, under which a number of regulations have been made. For example the Chemicals Regulations 2011 and the Oil Regulations 2011 created a new offence related to the release of an offshore chemical or oil. The definition of 'discharge' was amended to cover any intentional emission of an offshore chemical, and a new definition of 'release' was inserted that catches all other emissions. Further, amendments introduced by the Offshore Chemicals (Amendment) Regulations 2011 and the Offshore Petroleum Activities (Oil Pollution Prevention and Control) (Amendment)

Regulations 2011 had the effect that third parties may now be held directly liable for oil pollution incidents as DECC can take enforcement action against third party contractors (previously applicable statutory law did not trigger any liability or direct exposure of third party contractors).

Another significant development was the publication in June 2013 of the OSD as outlined in question 32. Further, while the present EU legal framework for environmental liability is restricted to territorial waters (about 22km offshore), under the OSD, the geographical zone for damage to waters will be extended to cover all EU marine waters including the exclusive economic zone (about 370km from the coast) and the continental shelf, where the coastal member state exercises jurisdiction.

It is also important to refer to the Environmental Permitting (England and Wales) Regulations 2010 (as amended) (the 2010 Regulations), which provide a consolidated system of environmental permitting in England and Wales. Breach of the 2010 Regulations is a criminal offence. For offences prior to 12 March 2015, offences are subject to a maximum fine of £50,000 or 12 months' imprisonment, or both, in the Magistrates' Court or an unlimited fine or imprisonment for a term not exceeding five years, or both, in the Crown Court. For offences after 12 March 2015, both the Magistrates' Court and the Crown Court have the power to impose unlimited fines. In respect of England and Wales, the Sentencing Council Environmental Offences Definitive Guideline (effective 1 July 2014) introduced significant changes to the way in which certain environmental offences are sentenced (including breaches of the 2010 Regulations), particularly in respect of setting the starting level of fines for companies as the fines are based on a tariff system according to an organisation's turnover, the level of harm and the level of culpability. In April 2015 the power of the Environment Agency to accept enforcement undertakings (offers of voluntary action including an element of financial contribution) in lieu of prosecution was extended to offences under the Environmental Permitting Regulations 2010.

The Pollution Prevention and Control (Scotland) Amendment Regulations 2009 apply similar requirements as the 2010 Regulations to Scotland. The 2010 Regulations were recently amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2013 (2013 Regulations), which transpose the requirements of the Industrial Emissions Directive (IED) into law in England and Wales. The IED consolidated and recast several directives concerning pollution control, including the Integrated Pollution Prevention and Control (IPPC) Directive and Large Combustion Plant Directive. The 2013 Regulations, which were implemented in order to strengthen the existing IPPC regime, make various changes to the existing regulatory regime, including providing for a more extensive range of regulated activities, imposing new requirements on installations and, in some cases, shifting regulatory responsibility to local authorities or removing certain installations from the regulatory regime entirely. All new installations became subject to the IED from 7 January 2013 and, from 7 January 2014, all installations that were already subject to the (now recast) directives also became subject to the IED. Separate regulations implement the IED in Scotland and Northern Ireland.

The EA has recently issued a Regulatory Position Statement extending the requirements for environmental permits from new onshore oil and gas exploration appraisal facilities to existing onshore oil and gas facilities, in addition to permits required for crude oil unloading, handling, storage or treatment. The EA intends to review all permits granted before 1 October 2013 and invite applications for new permits from existing facilities not previously required to comply with the 2010 Regulations. Although the EA states that it will not normally take enforcement action against operators of existing facilities for not having the requisite permit prior to permit determination, if certain requirements (including a duly made application for a variation or new permit) are not met then the EA will take enforcement action and sanctions in line with its broader policy.

In respect of damage to protected species or to natural habitats in the area of the seabed of the continental shelf, the Environmental Damage (Prevention and Remediation) Regulations 2009 as amended are also of key relevance, as they lay down steps to be taken by operators where there is imminent risk of environmental damage (similar regulations are applicable in other waters). Where damage has occurred, the enforcing authority must assess the damage and identify remedial measures, and serve a remediation notice on the responsible operator specifying what remediation is required. For damage to species and habitats and damage to water, the Regulations also require that, in addition to any measures taken to return the environment to the condition it was in before the damage occurred, compensatory measures should also be taken to make amends for where the damaged environment does not completely recover and for the loss of environmental resources and environmental services pending recovery. Sanctions under various environmental regimes and consequential costs of remediation can be significant.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

DECC does not apply specific standards to those employed in the oil industry. From a European perspective, as a member of the EU, EEA nationals are permitted to live and work in the UK without being discriminated against on the basis of nationality. All non-EEA nationals must obtain work permission in order to work in the UK. Those working purely offshore are exempted from this requirement. In order to sponsor an employee to work in the UK, an employer must be licensed to do so by the body known as UK Visas and Immigration. Penalties for non-compliance include civil penalties of £20,000 per illegal worker or unlimited fines or imprisonment for knowing non-compliance. There is no minimum amount of local labour that must be employed.

Once it has been ascertained that an individual has the right to work in the UK, they also have the benefit of the Equality Act 2010, which provides that employers are prohibited from discriminating against them on various grounds including race (where race includes colour, nationality and ethnic or national origins). The scope of this protection is wide, and includes the management of recruitment, terms of employment or engagement, access to job opportunities and benefits and termination. If an employer is found guilty of discrimination under this Act, it could be liable for unlimited compensation arising from the discrimination, including an award for injury to feelings. An employment tribunal may also make recommendations regarding the operations of the employer, and a failure to abide by such recommendations may result in the employer being made to pay further compensation. However, the tribunal's power to make recommendations for the wider workforce which would not benefit the claimant employee will be abolished from 1 October 2015.

There is no prescribed training fund for the local workforce.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

There are three elements of taxation to which companies in the oil industry may be subject: petroleum revenue tax (PRT), ring fence corporation tax (RFCT) and a supplementary charge (SC). HM Revenue and Customs Large Business Service – Oil & Gas Sector (formerly the Oil Taxation Office) administers the taxation regime.

PRT

PRT is a field-based tax charged on the profits arising to each participant from the production of oil under a licence. It is charged before RFCT and SC and is deductible in computing profits for RFCT and SC purposes. Certain specified development and maintenance expenditure can be deducted for PRT purposes against profits from that particular field. The PRT tax rate is currently 50 per cent on profits after certain allowances, but this will be reduced to 35 per cent for periods ending after 31 December 2015. A 'supplement' allowance or 'uplift' provides relief at 35 per cent (on top of the basic 100 per cent relief) for certain expenditure incurred in bringing the field into production or substantially enhancing the rate of production. Two further key available allowances are the 'oil allowance' and the 'safeguard' – the former provides each field with a level of production that is not subject to PRT; the latter ensures that a participator receives a minimum return on its investment before PRT is payable. On 16 March 1993, PRT was abolished for fields given development consent on or after that date. With effect from 1 July 2007, fields that have previously been decommissioned and are later redeveloped have been removed from the charge to PRT. The effective rate of tax on oil-related profits has now gone from

Update and trends

Oil price
A combination of demand and supply-side factors brought the price of Brent crude from US$115 per barrel in June 2014 to below US$50 per barrel in early January this year. With prices currently around US$65 today, the commercial viability of the UK Continental Shelf remains a concern for the industry. As a mature and relatively expensive basin, the collapse in the oil price has had a significant impact on the margins of producers in the North Sea. The number of exploratory wells being drilled is declining, with many proposed developments placed on hold. This is especially prevalent in the frontier areas west of Shetland and high pressure, high temperature fields where extraction costs are high. Given these difficulties, some of the bigger players operating in the North Sea have, or have stated an intention to divest themselves of UK Continental Shelf assets. This will therefore likely be a destination for smaller exploration and production companies.

Onshore oil and gas update
The unconventional exploration industry continues as a slow burner with very few exploration wells having been drilled to date. Local community opposition and the lengthy planning permission process has meant that very little exploration of tight oil and gas has been conducted and the industry is therefore a long way off determining the commerciality of unconventional resources.

The Infrastructure Act 2015 has created a right for exploration companies to conduct operations below 300 metres without it amounting to a trespass to the above surface landowner. This therefore opens up the potential for horizontal drilling without the need to compensate above-surface land owners (aside from the landowner above the vertical well) for a technical trespass.

We wait to see whether government policy from the newly elected Conservative government will continue to support onshore exploration for unconventional hydrocarbons or not.

Oil and Gas Authority
The new Oil and Gas Authority(OGA) was established on 1 April 2015. It is an Executive Agency and is therefore still directly answerable to the Secretary of State and within the DECC 'family', but the intention is that it will transition to a government company by summer 2016. OGA's remit, on behalf of the Secretary of State, includes the following functions:

- conducting licensing rounds and handling all licence amendments for both onshore and offshore;
- determining licensing strategy and policy;
- exploration functions;
- decommissioning functions;
- determining field and area strategies;
- resolving upstream infrastructure commercial disputes;
- managing the UK oil and gas portal;
- govern all hydraulic fracturing activities;
- promoting supply chain growth; and
- managing the commercial relationship between the government and the industry as well as facilitating maximising economic recovery (MER) in the UK.

At the time of writing, the DECC personnel responsible for licensing have moved to OGA and are managing amendments to current licences. At present, it is not clear when the transfer of functions from DECC to OGA will be formally announced, but it may take some time for the recruitment process to fill all of the required roles within OGA and so it is worth keeping both organisations in mind until the situation is clarified.

DECC will continue to lead on the development of the MER policy in the UK and the associated new bill that will establish the powers of OGA. This bill is due to be prepared in time for the first session of the new Parliament in summer 2015.

OSR
It is unclear how the OSDR will implement the new Offshore Safety Regulations of 2015. See comments within for further information.

2015 Budget
As part of the 2015 Budget, the Chancellor took the opportunity to support the North Sea oil industry and build upon the new simplification principles that were set out in the autumn statement.

The Chancellor, George Osborne, announced a package of measures designed to ensure continued investment in the industry. The measures are expected to lead to over £4 billion of additional investment and at least 120 million barrels of additional production of oil by 2020. This is in recognition of the economic transformation of the market since George Osborne increased the supplementary charge from 20 per cent to 32 per cent in 2011.

Tax cuts are central to the package. George Osborne announced that petroleum revenue tax will be cut by 15 per cent to 35 per cent and the supplementary charge will also be reduced to 20 per cent.

A new basin-wide investment allowance will be introduced and the existing field allowances will be abolished. The new allowance will exempt a portion of a company's profits from the supplementary charge. According to the Budget documents, the amount of profit which the allowance will exempt will equal 62.5 per cent of the investment expenditure a company incurs. The government consulted on this relief at the beginning of the year and further details on the mechanics of the relief will be provided along with draft legislation.

It was also announced that following the Wood Review the government will provide £20 million for seismic and other geographic surveys to boost offshore exploration in unexplored areas of the UK continental shelf and will also charge the OGA with the task of scrutinising companies' decommissioning plans to ensure these are cost effective.

62 per cent to 50 per cent for non-PRT paying fields and from 81 per cent to 75 per cent for PRT paying fields (67.5 per cent from 1 January 2016).

RFCT
Oil companies are subject to corporation tax, but there are a number of variations to the usual rules, including the 'ring fence' mechanism. The ring fence rules prevent taxable profits from oil and gas extraction being reduced by losses from other activities by treating such ring-fenced extraction activities as a separate trade. However, it is possible to carry forward or back ring fence losses against other activities. Capital allowances on relevant qualifying expenditure are available to reduce profits for corporation tax purposes. The applicable rates of tax are 20 per cent from 1 April 2015) for non-ring fence profits and 30 per cent for ring fence profits.

Despite the continuing cut in the main rate of corporation tax (from 26 per cent in 2011 to 20 per cent in 2015), the rate will remain at 30 per cent for profits from oil extraction in the UK.

SC
Introduced in April 2002, the SC constitutes an additional charge on ring-fence profits (calculated in the same way as RFCT) without any deduction for financing costs. Costs that have been deducted for the purpose of paying corporation tax must be re-added before computing the SC liability. The SC is paid and administered at the same time as corporation tax. The SC is 20 per cent with effect from 1 January 2015 (previously 32 per cent). The effective tax rate on ring fenced activities is therefore 50 per cent, which may be further reduced by availability of the new investment allowance mentioned below.

Legislation was introduced in the Finance Act 2012 that effectively provides for a cap on the tax relief available for SC purposes for decommissioning costs. This restricts the use of SC losses arising as a result of expenditure incurred in connection with decommissioning to the old 20 per cent rate of SC for decommissioning carried out on or after 21 March 2012.

The Finance Act 2015 removed existing field allowances and introduced a new basin-wide 'investment allowance'. Rather than being available based on the nature of a particular field, the portion of profits reduced by the investment allowance is dependent on a company's investment expenditure. The allowance removes an amount equal to 62.5 per cent of investment expenditure incurred by a company in relation to a field from its adjusted ring fence profits subject to the supplementary charge.

Recent developments
As noted above, and partly in response to the current low oil price, the 2015 budget and resulting Finance Act 2015 brought significant tax cuts for the UK oil and gas industry, marking in the case of SC a reversal from rises introduced in 2011. It also introduced the legislative framework for a 'cluster area' allowance, which followed the 2014 consultation on a new allowance to encourage investment in ultra-high pressure high temperature

field clusters. The Finance Act 2015 provides for the Secretary of State to determine offshore areas as 'cluster areas', with secondary legislation on this to follow. This and further recommendations from the Wood Review are likely to be implemented, particularly as the OGA begins to operate.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Crude oil and crude oil products in the UK are not subject to a mandatory price-setting regime. The UK adopts a free market approach, and oil and oil products are therefore priced and valued accordingly.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Competition and Markets Authority (CMA) is the principal body responsible for the enforcement of competition law in the UK.

The CMA is an independent statutory body, created by the Enterprise and Regulatory Reform Act 2013 (ERRA 2013) to replace the Office of Fair Trading (OFT) and the Competition Commission (CC).

The creation of the CMA brings the competition work of the OFT and CC under one single authority. The CMA acquired full powers on 1 April 2014. Sector regulators have concurrent competition powers. There is no sector regulator for the upstream industry, but in the downstream markets the Office of Gas and Electricity Markets has concurrent powers to enforce the competition prohibitions. There is also a specialist competition court, the Competition Appeal Tribunal, which hears appeals against decisions of the CMA and sector regulators, as well as damages claims and certain other cases.

The CMA and the sector regulators enforce the UK's prohibitions on restrictive agreements and abuse of dominance (Chapter I and Chapter II prohibitions of the Competition Act 1998) and their EU equivalents (articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU)) in the UK. Under the Enterprise Act 2002, as amended by ERRA 2013, the CMA also enforces the UK's criminal cartel regime. The Serious Fraud Office assists in the prosecutions of the criminal cartel offence.

Penalties for breach of Chapter I and Chapter II prohibitions of the Competition Act 1998 include fines of up to 10 per cent of worldwide turnover, and directions that infringing conduct be brought to an end. They are therefore similar to the penalties applicable under articles 101 and 102 of the TFEU. Other consequences include possible contractual invalidity or liability to damages actions by aggrieved third parties. The penalties for criminal cartel offences include imprisonment for up to five years or fines, or both. A director involved in anti-competitive behaviour may be disqualified from acting as a director for up to 15 years or may give an undertaking not to act in that capacity. The first directors to be found guilty of the UK criminal cartel offence were involved in the marine hose cartel. They received prison sentences reduced on appeal that ranged between 20 and 30 months.

The Enterprise Act 2002 (as amended by ERRA 2013) makes provision for market investigations. It enables the CMA to carry out both phases of an investigation into a market, starting with an initial study of an entire market or part of it and the power to refer that market for a full investigation where there is a concern that features of that market may restrict or distort competition. Where the CMA carries out a market investigation it has wide powers to specify remedies (but not to impose fines). Government ministers may intervene in market investigations in very limited circumstances on public interest grounds. The Secretary of State for Business has the power to request the CMA to investigate public interest issues alongside competition issues in market investigation cases. ERRA 2013 introduced tight statutory timescales for the completion of studies, investigations and implementation of remedies stemming from investigations.

The merger control regime in the UK is subject to a voluntary notification system. The CMA runs the whole merger process, from Phase I (initial stage review of the proposed merger) to Phase II (second stage review of the proposed merger where it is believed that the merger has a realistic prospect of substantial lessening of competition). The CMA has a deadline of 40 working days to conduct a Phase I investigation and 24 weeks (subject to extension) from the date of reference to complete Phase II. The CMA has the power to require notifying parties and third parties to provide documentation and to request the attendance of witnesses to assist in an investigation at both phases of the process. The CMA also has powers to impose interim orders to suspend all integration steps and to prevent pre-emptive action in relation to anticipated or completed mergers.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

Other than in relation to merger control, it is not possible to obtain a determination from any UK competition authority on the competition law compatibility of a proposed action or agreement. Companies are responsible for carrying out their own assessment of whether their activities comply with competition law (there is limited exception to this rule in that the Competition and Markets Authority (CMA) will provide a public short form opinion on proposals that raise novel or unresolved questions of law in relation to arrangements between competitors where the CMA considers that guidance would benefit business generally). Agreements that technically infringe the prohibition on restrictive agreements but that meet the criteria set out in Chapter 1 of the Competition Act 1998 (mirroring the provisions in article 101(3) of the Treaty on the Functioning of the European Union) or in relevant block exemptions will be legally enforceable. EU guidance is the common standard of reference. Companies may have to rely on or defend their conclusions on these matters in front of the competition authorities or the courts.

The UK domestic merger control regime in the Enterprise Act 2002 is a two-phase process. It does not impose mandatory notification, nor does it impose automatic suspension requirements. Notification is voluntary. The CMA does, however, have the power to start an own-initiative investigation and to refer a transaction for Phase II investigation up to four months after completion of a non-notified transaction. All mergers are subject to a statutory timetable, giving the CMA a deadline of 40 working days to conduct a Phase I investigation. Where a transaction is referred for a second-phase investigation, the CMA must report within 24 weeks, subject to an eight-week extension period. The CMA has broad powers to impose both structural and behavioural remedies.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

The UK is a signatory to a number of international treaties and multinational agreements that have an impact on UK regulation. Among the most important are the 1958 Geneva Convention on the Continental Shelf and the 1982 United Nations Convention on the Law of the Sea, which together set the limits for a state's territorial sea and continue to govern the UK's access to its continental shelf and beyond. Also significant to the oil industry is the Energy Charter Treaty, which regulates between member states a number of energy-specific areas such as competition, transit of energy goods, trade, investment and dispute resolution. Other notable multinational agreements include the 1998 OSPAR Convention, which has had a significant impact on the UK's decommissioning regulations. Following the OSPAR Commission meeting in June 2013, there has been no change to the policy on derogations for the decommissioning of installations under the OSPAR Convention. However, action has been taken to harmonise the OSPAR Harmonised Mandatory Control System, which regulates the discharge of offshore chemicals and the EU REACH Regulation. The next OSPAR Commission meeting is to be held in June 2015.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

While there is no specific limitation to foreign companies, DECC has the power to make a public interest assessment of the impact of a foreign company on the market. Further, DECC requires that, to be a licensee, a company must have a place of business within the UK. In assessing the suitability of a candidate to act as an operator, DECC has stated that the location of the company's operations may be a factor in assessing its ability to run operations effectively.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Under UK law, cross-border transactions of this nature are not governed by any specific legislation or rules.

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

The US oil industry is divided into three sectors: upstream (exploration and production), midstream (processing, storage and transportation) and downstream (refining, distribution and marketing).

Industry participants are categorised as 'supermajors', 'majors' and 'independents'. 'Supermajors' are the handful of very large companies that account for most of the US oil industry revenues. US-based supermajors include ExxonMobil, Chevron and ConocoPhillips, whereas the overseas-based supermajors, BP and Shell, have substantial US operations. Smaller-scale integrated firms include Marathon, Hess and Murphy Oil.

A larger number of companies specialise in particular sectors. The 'independents' engage predominantly in upstream activities and include Occidental, Devon, Anadarko and Apache. Midstream specialists include Kinder Morgan. Refining and marketing operations are conducted by Phillips 66, Valero, Sunoco, Tesoro and Western. The industry is supported by oil service companies led by Schlumberger, Halliburton and Baker Hughes, and by a variety of trade associations including the American Petroleum Institute (API).

US subsidiaries of national oil companies owned or controlled by foreign governments are important participants in the US oil industry. For example, Venezuelan-based Petróleos de Venezuela SA (PDVSA) owns Citgo, which supplies gasoline to nearly 6,000 retail outlets and owns interests in three refineries in the US.

'Proved reserves' are estimates of the amount of oil that is reasonably certain to be recoverable from known reservoirs under present economic and operating conditions. The US Energy Information Administration (EIA) estimated US-proved reserves at 36.5 billion barrels for December 2013, an increase of 3.1 billion barrels (9.3 per cent) from 2012. While US-proved reserves peaked in 1970 and have since declined by nearly 40 per cent, proved reserves of crude oil and lease condensate have now risen for five consecutive years. According to the CIA World Factbook, in January 2013 the United States ranked 13th among nations in proved oil reserves. About one-fifth of US-proved reserves are located offshore.

In 2009, the Securities and Exchange Commission changed its reporting guidelines to permit companies to report probable and possible reserves, as well as proved reserves.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

In 2014, oil provided an estimated 35 per cent of US energy needs, along with coal (18 per cent), natural gas (28 per cent), nuclear (8 per cent) and renewables (10 per cent). The transport sector accounted for 71 per cent of oil consumption, primarily in the form of gasoline. The industrial sector consumed another 23 per cent for heating, diesel engines and as petrochemical feedstock. Only 1 per cent of US power generation is fuelled by oil. Regarding non-conventional sources, EIA projects renewables used for electricity and heat generation to grow by 3.7 per cent in 2014, with wind power capacity increasing by 8.9 per cent. While EIA expects continued growth in solar electricity generation, present projections show utility-scale generation growing to no more than 0.5 per cent of total US generation by 2015.

In 2014, the US consumed a total of 6.95 billion barrels of petroleum products, an average of 19.05 million bbl/d. US crude oil production is projected to increase from an average of 8.7 bbl/d in 2014 to 9.2 million bbl/d in 2015, and 9.3 million bbl/d in 2016. The domestic production of the US represents approximately 60 per cent of the total petroleum it consumes. According to the EIA, US oil imports are expected to fall to just 21 per cent of total domestic consumption in 2015. The share of total US liquid fuels consumption met by net imports fell to 26 per cent in 2014. In 2014, over 60 per cent of US crude oil and petroleum products imports came from countries in the Western Hemisphere (North, South and Central America, the Caribbean and US territories), while 20 per cent of imports originated from the Persian Gulf (Bahrain, Iraq, Kuwait, Qatar, Saudi Arabia and United Arab Emirates).

The EIA predicts US consumption of petroleum and other liquids to increase to 19.6 million bbl/d in 2020, and then decline to 19.3 million bbl/d in 2040. US crude oil production peaked in 1970 and has declined 33 per cent since then; however, domestic production has increased each year since 2005. Domestic production is projected to continue to increase in the near term due to enhanced recovery from tight oil formations.

Although US energy consumption is projected to continue to increase over the next 25 years, crude oil as a share of overall energy is projected by the EIA to decrease as a result of federal and state renewable energy programmes and the rising cost of fossil fuels. Transportation will continue to dominate demand for petroleum and other liquids, but there will be a shift from motor gasoline to distillate. The gasoline share of total demand for transportation petroleum and other liquids is predicted to decline by 10.6 per cent, while distillate consumption should increase by 7.2 per cent. Increased use of compressed natural gas and LNG in vehicles is also predicted to replace about 3 per cent of petroleum and other liquids consumption in the transportation sector in 2040.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

There is no single source of law that can be considered a United States energy policy. At the federal level, the Department of the Interior (DOI), the Department of Transportation (DOT), the Department of Energy (DOE) and the Environmental Protection Agency (EPA) play important roles in the development and maintenance of a national energy policy. At the state level, their counterpart agencies, which are often delegated authority by federal legislation, play a similar role.

Over the years, there have been several legislative efforts by the United States Congress to develop a general energy policy that promotes the domestic production of oil and gas and other sources of energy, while also responding to environmental concerns. For instance, after many years of debate, the Congress passed the Energy Policy Act of 2005. The Act is intended to facilitate the increased domestic production of oil and gas as well as electric and other forms of energy. The law also clarified the reach of the Safe Drinking Water Act in hydraulic fracturing matters and the application of EPA's storm water rules to the construction of oil and gas production sites.

On the heels of the 2005 Energy Policy Act, the Congress enacted the Energy Independence and Security Act of 2007 (EISA). The EISA expanded the renewable fuel programme established by the Energy Policy

Act, which required volumes of renewable fuel to be incorporated into gasoline sold in the United States. The EISA, and subsequent regulatory revisions implemented by the EPA in 2010, increased the volumes established for renewable fuel and added new specific volume requirements for advanced biofuels, biomass-based diesel and cellulosic biofuel. The EISA articulated a national policy aimed at reducing the country's carbon footprint and dependence on foreign oil through the use of renewable fuels.

President Obama has endorsed regulatory and legislative initiatives aimed at enhancing energy independence and the reduction of greenhouse gases, such as the increase of the fuel efficiency standards for motor vehicles, the development of renewable energy technology and 'green' jobs. The Obama Administration has proposed the toughest fuel economy standards for passenger vehicles in US history, requiring an average performance equivalent to 54.5 miles per gallon by 2025.

4 Is there an official, publicly available register for licences and licensees?

Oil and gas leases on public property are generally on record with the relevant federal and state agencies, and in many cases are available for review on public websites. Depending on local regulations, leases on public lands may also be filed locally. Oil and gas leases on private property are typically found or summarised in the public land records (generally at a local level such as a county or parish), but other agreements affecting the lease and interests under the lease may not be filed in public records. Generally, access to these records is without cost, however, there is usually a charge for obtaining copies of the documents.

5 Describe the general legal system in your country.

The United States is a common law jurisdiction, organised on a federal system with a federal government and state and local government entities. There are constitutions at each of the federal and state levels allocating powers among executive, legislative and judicial branches and reserving civil and governmental rights, and at federal, state and local levels there are extensive forms of legislation and comprehensive systems of administrative regulation and rule-making. Subject to these sources of law, judges apply common law reasoning and precedents including respect for the rule of law. Contract and property rights are enforced by causes of action in state or federal courts or by agreement in court-administered or private arbitration. The US is party to the New York Convention on recognition of arbitral awards and other conventions for recognitions of foreign judgments, subject to specified exceptions.

Improper payments to officials and private parties within the United States are strictly prohibited. Federal and state law criminalise both corrupt payments to government officials and commercial bribery, and regulate expenditures on political campaigns and other aspects of participation by oil companies, as well as other entities, in the political process. Such anti-corruption and political laws generally apply to foreign as well as domestic entities.

The United States has comprehensive laws governing improper payments made to foreign officials. The US's principal international anti-bribery statute, the Foreign Corrupt Practices Act (FCPA), prohibits both domestic and foreign companies that are 'issuers' (ie, that are listed on a US stock exchange or are required to file periodic reports with the US Securities and Exchange Commission (SEC)), as well as their officers, directors, employees or agents, among others, from bribing a foreign official, a foreign political party or official, or any candidate for foreign political office in order to influence an official act or decision, or to secure an improper business advantage. In addition, the FCPA requires issuers to keep books and records that accurately reflect their transactions and dispositions of assets. It also requires issuers to maintain internal accounting controls sufficient to provide reasonable assurances that transactions are properly authorised and properly recorded, such that their financial statements may be prepared in conformity with generally accepted accounting principles.

The FCPA is enforced by the US Department of Justice (DOJ) and the SEC.

Issuers that violate the FCPA may face steep criminal fines or civil penalties. For example, in 2013, certain subsidiaries of Weatherford International Limited (Weatherford), a Swiss oil services company that was an issuer in the US, pleaded guilty to bribery under the FCPA, and Weatherford was required to pay a US$87 million criminal penalty to the DOJ and US$65 million in disgorgement, interest and civil penalties to the SEC – making it one of the largest corporate FCPA settlements ever. In addition, individuals who violate the FCPA could serve prison time. For example, in 2014, two former chief executives of PetroTiger Ltd, a British Virgin Islands oil and gas company, were charged for their alleged participation in a scheme to bribe foreign government officials; and in its press release announcing the charges, the DOJ noted the maximum prison sentences allowed for FCPA violations.

Typically, where an FCPA violation has occurred, there is a risk of other criminal exposure, including mail or wire fraud and money laundering. Under the US Travel Act, so-called 'commercial bribery' or 'private-sector bribery' is illegal in most circumstances.

Given the global nature of the oil and gas industry, and the necessity of interactions with government officials, companies and executives in this field should make establishing and maintaining an effective anti-corruption compliance programme a top priority.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The determination of which laws apply to oil activities at a given surface location depends on whether the underlying resources and location are owned by a federal or state government or by private parties, and whether the location is onshore or offshore.

The Mineral Leasing Act of 1920 and the Mineral Leasing Act for Acquired Lands of 1947 govern upstream activities on federal onshore property, while the Outer Continental Shelf Lands Act (OCSLA) governs development of federal offshore property. Additional industry-specific federal statutes include the Oil and Gas Royalty Management Act, which governs lease and royalty agreements, and the Petroleum Marketing Practices Act, which regulates supply agreements and leases held by retailers and wholesalers of trademarked motor fuels. Other state laws relating to regulatory agency authority and state contract law pertain to oil activities on both public and private lands.

State laws, such as the Texas Natural Resources Code and the California Public Resources Code, govern exploration and production on state-owned land, including state offshore property and privately owned land.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

While there are no express legislative provisions for expropriation, there are provisions in the federal and state constitutions and codes that allow governments to 'condemn' or take property for public use upon payment of just compensation. However, condemnation of properties involved in oil activities is rare due to the requirement of providing just compensation for the property taken. Private parties may also bring actions for 'inverse condemnation' where they believe a public entity has taken such property without providing just compensation or otherwise complying with the relevant law.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

Within the DOI, the Bureau of Land Management (BLM) regulates oil exploration and production on federal onshore property; the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) manage federal offshore oil production activities; the Office of Natural Resources Revenue collects royalties for both onshore and offshore oil production; and the Bureau of Indian Affairs (BIA) regulates American Indian land development along with the BLM. The Federal Energy Regulatory Commission (FERC) has jurisdiction over interstate oil pipelines. The DOE administers the Strategic Petroleum Reserve, collects industry data and funds and conducts other energy research and production programmes.

Each of the major oil-producing states has an agency tasked with regulating certain upstream activities, such as the issuance of drilling permits and intrastate pipeline transportation. These agencies include the Railroad Commission of Texas; the California Department of Conservation's division of oil, gas and geothermal resources; the Louisiana Office of Conservation; and the Alaska Department of Natural Resources' division of oil and gas. Some state public utility commissions oversee aspects of intra-state oil pipelines.

Many other agencies enforce police power laws and regulations regarding environmental, health, safety and work conditions (see question 32).

9 What government body maintains oil production, export and import statistics?

Official statistics on oil production, imports and exports are collected by the EIA of the DOE. The EIA also provides forecasts and analysis of oil consumption, production, reserves, refining and trade. State agencies maintain data on local oil production.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

In the US, title to oil, gas and minerals is generally held by the owner of the surface until and unless that right is severed and granted to others. This title to the mineral estate may be separated from the surface estate by a grant or a reservation. When the mineral estate has been severed from the surface estate, the mineral estate owner holds what is referred to as the 'dominant estate', and the surface estate owner holds the 'servient estate'. In general terms, this means that the mineral estate owner has the right of reasonable access to and use of the surface estate in order to exploit the minerals.

In Louisiana, the only civil law state in the US, mineral rights do not exist as a separate, perpetual estate in land, but rather can only be held separately from the surface in the form of a 'mineral servitude'. The servitude gives its holder the right to enter the property and extract the minerals, but it may expire, or prescribe, after 10 years of non-use.

Both the federal government and many states own oil, gas and mineral rights both onshore and offshore.

Government and private transfers frequently reserve to the grantor all or a portion of the mineral rights, so the land title records must be carefully reviewed.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

In 2014, five states and the Gulf of Mexico supplied 81 per cent (7 million barrels per day) of US crude oil production. Oil production was predominantly concentrated in Texas (36 per cent), federal offshore waters (16 per cent), North Dakota (13 per cent), Alaska (6 per cent), California (6 per cent) and Oklahoma (4 per cent). Total US crude production grew 16 per cent in 2014, with Texas and North Dakota leading this growth. Texas increased crude oil outputs by 25 per cent while North Dakota increased outputs by 26 per cent from 2013. Since 2010, North Dakota and Texas have increased crude oil output by 251 per cent and 170 per cent, respectively.

Almost all existing offshore leasing is in the Central and Western Gulf of Mexico. Included in the Obama administration's Outer Continental Shelf Oil and Gas Leasing Program for 2012–2017 are 15 potential lease sales in six Outer Continental Shelf planning areas: the Western and Central Gulf of Mexico, the portion of the Eastern Gulf of Mexico not under Congressional moratorium and the Chukchi Sea, Beaufort Sea and Cook Inlet planning areas offshore Alaska.

As of October 2014, a total of six sales were held under the programme, covering approximately 140 million acres. Two sales are proposed to take place in 2015 for leases in the Central and Western Gulf of Mexico Planning Areas.

In addition, the programme provides for potential lease sales in the Chukchi and Beaufort seas off Alaska to take place in 2016 and 2017, respectively, as well as a special interest sale in Cook Inlet scheduled for 2016. Although the present programme does not reinstate lease sales off the coast of Virginia, it does contemplate increased seismic activity in the mid-Atlantic and south-Atlantic to collect data about the oil and gas potential in the region. In addition to the restrictions noted above, a portion of the Central Gulf of Mexico and Eastern Gulf of Mexico are under a Congressional moratorium until 2022 as part of the Gulf of Mexico Energy Security Act of 2006. Further, on 31 March 2010, the president withdrew Bristol Bay in Alaska from leasing consideration up to June 2017.

Onshore, the Arctic National Wildlife Refuge in Alaska remains off limits to drilling despite many years of intense debate in Congress. Apart from national parks and wilderness areas, federal lands outside Alaska are largely available for exploration and production. However, federal and state agencies can also impose drilling restrictions on particular lands on environmental, military or other grounds.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

US practices do not feature concessions or production-sharing agreements typically associated with a state oil company. The right to conduct exploration and production on the lands of another is obtained through an oil and gas lease granting the right to explore for and extract oil from the leased premises, and the ownership of oil actually produced. The terms of the lease and applicable law limit leaseholder activities.

Processes established by the BLM (onshore), BOEM (offshore) and BIA (American Indian land) govern the awarding of leases for land subject to federal jurisdiction. These processes set forth the administrative costs and timing for submitting bids for leases on federal lands. The bid amount itself is determined by the bidder. Analogous state agencies award leases for state-owned land. Private owners of subsurface mineral rights negotiate or invite tenders for leases, which may follow trade association formats or contain terms and conditions specific to the particular lease.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The federal and state governments do not have a general right to participate in working interests or operatorship, or other rights beyond the royalty interests reserved to them. Various states and local governments do, however, collect fees and taxes associated with exploration and production activities pursuant to local law.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Federal leases impose a fixed royalty of a defined fraction of the amount or value of the oil or gas removed or sold from each lease. A royalty rate of one-eighth was common up until the 1970s, although now rates such as three-16ths or one-sixth are more common. For onshore operations, the federal rate must be no less than one-eighth, whereas offshore rates tend to be higher subject to the various statutory requirements.

Statutes fix most federal royalty rates, but both the DOI and special legislation (such as the Deep Water Royalty Relief Act) can modify standard terms, usually by reducing the stated royalty rate or suspending payment of royalties, to make frontier development more attractive. State and private leases have more variability in their royalty terms and rates, and may include a basis for payment other than proceeds or market value. States reap varying portions of the royalty for federal leases of land within or adjacent to their borders.

Payments to the government are generally in the form of royalties. Bonuses paid to secure a lease either through the bidding or negotiation process are a significant part of the cost of obtaining exploration and production rights. Where the royalty is set by statute, the amount of the bonus will determine the winning bidder. In recent years the amount of the bonus has been increasingly significant in private leasing activities. There may be rentals due in certain situations, but generally they are not collected in the absence of particular triggering events. For example, there may be provisions for delay rentals to be paid to the government in the event that production is shut down and there are no proceeds or market value (and hence, no royalties). There are no standard stabilisation provisions in the most common leases for new taxes or other impositions.

15 What is the customary duration of oil leases, concessions or licences?

Private and public oil and gas leases usually feature a fixed primary term and a conditional secondary term. The number of years in the primary term ranges from one year in mature fields to 10 years for frontier regions; private and American Indian leases tend to have short primary terms. Even though no production may be required during the primary term, the lease may be subject to termination if the leaseholder fails to drill test wells or undertake specified actions or, in lieu thereof, pay an additional rental fee. In private leases the primary term may be extended by agreement of the parties, while leases with governmental entities are subject to processes that generally do not provide for extension by agreement.

The secondary term continues indefinitely beyond the primary term so long as either the leased area produces oil or gas in paying quantities or the lessee performs other specified activities on the leased premises. The lease often excuses brief interruptions in production and longer interruptions due to force majeure.

16 For offshore production, how far seaward does the regulatory regime extend?

The Submerged Lands Act establishes state jurisdiction over submerged lands extending three nautical miles – 3.5 statutory miles, or 5.6km offshore (except Texas and Florida on the Gulf of Mexico, whose jurisdiction extends three leagues (approximately 10 statutory miles, or 16km)). The OCSLA establishes federal jurisdiction beyond the state limit, and a 1983 presidential proclamation declared that jurisdiction to extend to the boundary of the US Exclusive Economic Zone, 200 nautical miles (about 230 statutory miles, or 370km) from the coastline (in practice, oil development is active only to the edge of the OCS).

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

Upstream activities on onshore federal property are governed by the Mineral Leasing Act of 1920 and the Mineral Leasing Act for Acquired Lands of 1947, while the OCSLA governs development of federal offshore property; see question 7. There are a variety of differences and similarities between the two regimes; see questions 14, 18, 25, 28 and 32.

Generally, there is no difference in regimes governing the rights to explore for or produce different types of hydrocarbons. On the state level, however, regulations will occasionally specifically apply to exploration and production activities at specific geologic intervals, usually aimed at shale formations. Various states have passed regulations governing oil and gas drilling as a result of hydraulic fracturing, a widely used technique in shale oil and gas drilling.

On 18 April 2012, the EPA issued rules aimed at reducing air pollutants that may result from hydraulic fracturing, which came into full effect in 2015. One rule, which came into effect on 15 October 2012, requires operators to notify the EPA by e-mail two days before a well is completed using hydraulic fracturing.

On 20 March 2015, the BLM issued a final rule on hydraulic fracturing on federal and Indian lands. The rule includes standards for interim storage of recovered waste fluids and wellbore integrity requirements, and requires disclosure of chemicals used in hydraulic fracturing operations (which can be made on the FracFocus website, www.fracfocus.org).

On 19 May 2014, through a notice of proposed rulemaking, the EPA requested input regarding the information that should be obtained from hydraulic fracturing operators regarding the chemicals they use, how such information should be obtained and disclosed, the best management practices for collecting and reporting such information, ways to avoid duplicating burdens that may be imposed by other agencies and how to incentivise the use of safe chemicals in hydraulic fracturing. As the comment period ended on 18 September 2014, a final rule is anticipated in the near future.

Several other federal regulatory agencies are considering issuing new rules regulating oil and gas drilling, mainly as a result of shale oil and gas drilling.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

Pursuant to the OCSLA and in accordance with a five-year plan, BOEM grants offshore oil leases on the OCS to the highest qualified responsible bidder on the basis of sealed competitive bids. Auctions are based not on variable royalty rates but rather on the 'signature bonus' offered.

Pursuant to the Mineral Leasing Act, the BLM has responsibility for oil leasing on federal lands onshore, as well as state and private surface lands where mineral rights have been retained by the federal government. Lands cannot be leased until they are first offered competitively at an auction, which is conducted by oral bidding; no sealed or mailed bids are accepted. Leases are awarded to the highest qualified responsible bidder. Lands that have been offered competitively and received no bids are then made available non-competitively for leasing for two years.

On privately held lands, any person or entity capable of legally contracting with the lessor can do so, subject to state regulatory requirements.

See question 40 regarding restrictions on foreign holdings.

19 What is the legal regime for joint ventures?

The US does not specify a particular kind of agreement for collaborative development of an oil production project owned by multiple parties. Collaborative development or joint ownership is not considered a 'joint venture' under some applicable laws and often the agreement for collaborative operations negates the existence of a 'joint venture'. Operations by one or more parties come in two main categories. The first is a contract to share costs and benefits from a joint undertaking, often conducted by one mineral rights owner or lessee on behalf of others with interests in the same land or in lands embracing a particular reservoir. An example is the joint operating agreement, often entered into on Association of International Petroleum Negotiators or Association of American Landmen forms. The accounting procedure under a joint operating agreement is often that specified by the Council of Petroleum Accounting Societies. The second category consists of separate legal entities, which are typically encountered in processing, midstream and downstream applications. These entities include general or limited partnerships, corporations and limited liability companies. The particular terms of both types of agreements may substantially differ from those for a joint venture outside the US.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Unitisation is the consolidation of exploration and production activities affecting several parcels of land, or several interest holders in a given parcel. The consolidated activities are usually conducted by a unit operator. The goal is the efficient development of a common reservoir and equitable distribution of the costs, risks and benefits of production. Unitisation may be consensual or, in several jurisdictions, may be mandated when statutory requirements are triggered or agency determinations are made. Unitisation of federal lands requires DOI approval. Pooling can be voluntary or compulsory under certain state statutes.

21 Is there any limit on a party's liability under a licence, contract or concession?

While there are limits under some statutes for certain categories of liability, there is no overall external law limiting liability of a party involved in oil and gas operations. To the extent multiple parties engage in such operations, such parties' liabilities are generally joint and several, subject to any contractual indemnities that may allocate such liabilities.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

BOEM typically requires surety bonds from the operator of offshore operations, and may also require supplemental surety bonds from other present or former owners or operators. BLM regulations for onshore operations require surety or personal bonds to ensure compliance with requirements (see question 29). Private parties may require a variety of surety bonds, standby letters of credit or other forms of collateral to secure performance of operation, abandonment and decommissioning obligations. State regulations also require security for various types of oil operations. While parental guarantees are not required by external law, they may be required under contractual terms between parties.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

The United States maintains several different 'buy American' type laws, which apply in different contexts and are normally limited in application to procurements by governmental entities, but which include subcontracts of prime contractors on such projects. The imposition of local content requirements as a condition of investment would be inconsistent with obligations under the World Trade Organization (WTO) agreements and free trade agreements. There have recently been calls for authorisation of increased crude exports, partly as a result of increased unconventional domestic crude production.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

As noted above, there a number of different 'buy American' type laws. Although none apply specifically to oil and gas projects, purchases by the federal Department of Energy may be subject to the Trade Agreements Act, which restricts federal government agencies from purchasing from countries that are not party to an international agreement (the WTO Government Procurement Agreement or a free trade agreement) that requires national treatment for government procurements. State and local governments that have received federal government funding under certain programmes (eg, involving some transportation-related projects or the American Recovery and Reinvestment Act) can be subject to requirements to use US-origin steel and other products made in the United States.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

The transfer process differs for federal, state and private agreements, and also differs between onshore and offshore for federal properties. For example, assignments of record title interests and operating rights interests in federal OCS oil and gas leases, as well as offshore pipeline right-of-way grants, require the approval of BOEM. The time frame for BOEM processing of assignment applications is not specified. The assignment application requires payment of a nominal fee.

For onshore leasing and operational activities on federal lands, similar assignments are approved by BLM. BLM charges a nominal fee for assignment applications, and, likewise, does not specify a time frame for approval. Approval of state or local agencies, or both, may also be required for transfers of interests in assets under their jurisdiction. Transfer or assignment does not generally give rise to pre-emptive rights reserved to the government.

26 Is government consent required for a change of operator?

The new operator on a lease must notify and obtain approval from BOEM or BLM of the change in operator. Approval is contingent on the new operator's furnishing of any relevant bonding or equivalent financial collateral to secure performance of its operations and cover liabilities. Leases of state onshore and offshore lands contain notification provisions and may also contain consent provisions.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

When there is a change in control, such as an assignment or transfer, BLM (for onshore leases and rights-of-way), BSEE (for assignments of pipeline rights-of-way), or BOEM (for offshore leases) will subject the relevant application to a processing fee, similar to any initial application for a lease or grant.

BLM, BSEE and BOEM regulations relating to assignments and transfers do not contain provisions regarding any applicable taxes.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

Regulations, conditions of approval and lease terms establish the applicable requirements, procedure and time frames for decommissioning of wells, structures and pipelines on terminated leases and decommissioning of pipelines on terminated pipeline rights-of-way.

BLM regulations govern abandonment of oil and gas facilities on federal lands. A plan for plugging and abandoning of wells must be approved by BLM in advance. In addition, any pipelines or other facilities must be removed within a reasonable time after the expiration of lease or right-of-way grant and the area must be remediated and restored as determined by BLM. As an alternative, BLM may allow certain facilities to remain if harm will be caused by removal. Failure to remove facilities may result in BLM claiming the property for the United States or charging the operator for any removal and restoration conducted by the agency.

On federal outer continental shelf lands, decommissioning is governed by BSEE regulations. When facilities cease to be useful for production or a lease or grant terminates, the lessee must obtain BSEE approval to decommission wells and pipelines, platforms and other facilities, permanently plug wells, remove platforms and other facilities (with specified exceptions), and decommission pipelines and remove obstructions on the seafloor created by the lease and pipeline right-of-way operations. Post-production removal of oil and gas facilities may be deferred if they are converted to renewable energy generation or alternate use. Lessees or operators of a right-of-use and easement for renewable energy or alternate use generally must also meet the decommissioning obligations when their projects cease operation. BSEE may also approve conversion of a platform to an artificial reef, if a state agency accepts title and liability for the structure. Lessees, owners of operating rights and holders of a right-of-way are jointly and severally liable for decommissioning obligations.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

For onshore leases on federal lands, BLM regulations require lessees or operators to submit a surety or personal bond in an amount sufficient to ensure compliance with applicable requirements including plugging of wells, reclamation of the lease area and the restoration of land and surface waters adversely affected by lease operations upon abandonment or cessation of oil and gas operations. Bond coverage is required prior to BLM approval of any lease development activities.

For offshore leases of federal outer continental shelf lands, BOEM requires general bonding and supplemental bonding that varies based on an annual review conducted by BSEE of the lessee's decommissioning liability and an assessment by BOEM of the lessee's financial resources. BOEM is in the process of updating its regulations on financial assurance and bonding to address risks and loss prevention more comprehensively, incorporating a risk management approach. BOEM solicited public comments on financial assurance, bonding levels and other requirements in August 2014, and expects to issue a proposed rule in November 2015.

States and private lessors generally address offshore and onshore decommissioning through lease terms. Typical provisions require the lessee to maintain a bond in favour of the state and to either surrender or remove all improvements, at the option of the state, upon lease termination. The lessee may retain the right to remove equipment with reuse or salvage value.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Rates and other terms for oil transportation via interstate pipelines are regulated by FERC, and pipeline operators must file tariffs with FERC. FERC generally allows interstate pipelines to charge market-based rates up to a ceiling. FERC regulations also require interstate pipelines to provide non-discriminatory service to all shippers. The Pipeline and Hazardous Materials Safety Administration of the US Department of Transportation regulates the safety of interstate oil pipelines. States regulate intrastate oil pipelines, and may regulate gathering lines and other transportation activities. Some states have adopted variations of FERC's market-based rates policy.

At present, trucking and marine vessel transportation prices are not regulated, although safety, health and environmental regulations apply generally to pipelines, vessels and trucks (see question 31). With the increasing use of rail for shipping crude oil, the US DOT has focused on the safety of oil shipments by rail. On 25 February 2014 (as amended on 6 March 2014) the US DOT issued an emergency order requiring persons who ship crude oil by rail in rail tank cars to ensure that the material is properly tested with respect to flash point and boiling point to ensure it meets the standards to be transported by rail safely. Another emergency order was issued on 7 May 2014. This was the eighth emergency order or safety advisory issued by US DOT, concerning crude oil rail shipments, that has been issued in the past six months. DOT continues to issue safety advisories concerning crude oil shipments, the most recent being from 17 April 2015.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

Construction of a new interstate oil pipeline does not require approval from the federal government unless the pipeline will cross federal lands, but the operator must file a tariff with FERC. Pipeline construction projects require permits from state or local agencies, although some states no longer require public utility approval to construct new pipelines. Other forms of transportation are not generally subject to public utility regulation, but are subject to the Federal Motor Carrier Safety Act and other health, safety and environmental law. Rail transport of crude oil is subject to regulation by US DOT.

Pipelines across national boundaries require a presidential permit for construction. Pursuant to Executive Order 13337, this authority has been delegated to the State Department. The State Department must determine whether the proposed pipeline is in the 'national interest,' taking into account the project's potential effects on the environment, economy, energy security, foreign policy and other factors, and must consult with relevant state and federal agencies and solicit public comments.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

The legal regime for energy production and development

A new or modified exploration or development operation will usually need a local land use development permit as well as drilling and operating permits. Many projects must undergo a thorough environmental impact review under the federal National Environmental Policy Act or a state analogue. The process includes substantial public involvement and can be quite contentious. Failure to complete the process or comply with permits can lead to significant delays, penalties and injunctions.

Discharge restrictions

The federal laws applicable to the discharge of pollutants into the environment are generally not industry-specific. They are instead based on a particular impact. The Resource Conservation and Recovery Act (RCRA) regulates the management of solid and hazardous waste; the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) governs the clean-up of contaminated sites; the Clean Air Act (CAA) regulates air emissions from mobile and stationary sources; and the Clean Water Act (CWA) and Safe Drinking Water Act protect surface water and underground sources of drinking water. The principal federal enforcement agency is the EPA, but state agencies enforce similar state laws and can also be delegated authority by EPA to implement and enforce certain federal statutes such as the CAA, the CWA and RCRA.

While the foregoing environmental laws are applicable throughout the economy, there are some statutes that are focused on the oil and gas sector. For example, under the CWA, the EPA has issued effluent guidelines specific to both upstream and downstream oil operations, as well as rules applicable to the discharge of oil into navigable waters. The Oil Pollution Act of 1990 (OPA) addresses clean-up and damage assessments relating to oil spills into the navigable waters of the US, the adjoining shorelines or the exclusive economic zone. Another example is the Pipeline Safety Improvement Act of 2002, which governs the way in which the natural gas industry ensures the safety and integrity of its pipelines. By way of contrast, state regulatory agencies protect 'state waters', which are usually intrastate bodies of water and groundwater. Virtually all oil and gas facilities are subject to the requirements of the CWA, which generally protects the waters of the US from sources of pollution by prohibiting the discharge of pollutants without a permit. The CWA establishes and protects water quality standards, prohibits the oil pollution of these waters and exacts stringent penalties if such pollution takes place, establishes a comprehensive system of water discharge permits and authorises the US Army Corps of Engineers to issue permits for the discharge of dredged and fill material into waters of the United States. The scope of the federal government's jurisdiction over these waters is often controversial, and the EPA and the Corps of Engineers are proposing new rules to define the scope of this authority. As is the case with most federal environmental statutes, many CWA powers have been delegated to state environmental agencies, subject to EPA oversight.

OPA is a 1990 amendment to the CWA, which increased the federal government's authority to respond to large spills of oil into the waters of the United States. It applies to the owners and operators of onshore and offshore oil handling facilities, including oil cargo vessels, and imposes a CERCLA-like regime of joint and several and strict liability for these spills.

In 1980, CERCLA gave funding and enforcement authority to the EPA for the clean-up of sites contaminated by the spill or release of hazardous substances into the environment. Those persons or business entities determined to be 'responsible parties' can be held jointly and severally liable for the payment of clean-up costs on a strict liability basis; negligence need not be proven. CERCLA contains a 'petroleum exclusion', which excludes petroleum, crude oil and many petroleum products from the list of hazardous substances.

In addition to penalties and enforcement, CERCLA and OPA provide for the assessment of natural resource damages resulting from such spills or releases. Specific to the oil industry, OPA provides that responsible parties under the Act are liable for certain damages caused by an oil spill, which include damages to natural resources, real or personal property, subsistence use, lost government revenues, lost profits and earning capacity, and lost public services.

Both CERCLA and OPA designate state and federal governments and Indian tribes as trustees over the natural resources with the obligation to act on behalf of the public to recover damages. Therefore, when natural resources are damaged due to a discharge or release, one or more trustees will be responsible for ensuring that the resources are restored to their baseline condition and that the public is compensated for the interim loss of use. For example, the National Oceanic and Atmospheric Administration has primary responsibility to ensure that coastal resources are restored to their original condition and use.

Air pollution discharge or emission limits that are enforced under the CAA may apply to all sources of a particular type (eg, refinery heaters and boilers), or may be facility-specific. The CAA utilises permits to control the emission of air pollutants into the environment from industry and commercial activities. The oil and gas sector is subject to stringent regulations in the exploration and production, transportation, petroleum refining and distribution phases of operations. Federal and state environmental laws regulate both new and existing sources of air pollution. New sources, including existing sources undergoing major modifications, must often comply with more stringent emissions or technology standards.

Regulations and permit conditions may include detailed record-keeping and reporting requirements. Each statute and agency has considerable penalty, injunction and criminal law remedies for non-compliance (eg, maximum of $37,500 per day fines and imprisonment for CAA violations), and in some cases private parties may also recover damages or enforce public interests via citizen suits.

Following the Supreme Court's decision in *Massachusetts v EPA*, the mandates of the CAA are being extended to the generation of greenhouse gases, principally carbon dioxide. Recently, the EPA has enacted regulations under the CAA requiring certain facilities to monitor and record greenhouse gas emissions pursuant to the Mandatory Reporting Rule. Depending on the facility, the monitoring and record-keeping requirements can be substantial. Facilities covered by the rules include both upstream and downstream oil and gas operations.

Waste management

The federal Solid Waste Disposal Act and its 1976 amendment known as RCRA regulate the management and disposal of solid waste and especially hazardous waste. With respect to oil and gas operations, a number of production wastes are specifically excluded from hazardous waste regulation, and states also generally consider these wastes to be non-hazardous solid wastes. On the other hand, several petroleum refinery wastes are listed as hazardous wastes, and are subject to much more extensive regulation. The RCRA waste management system has been described as a 'cradle to grave system', requiring the observance of comprehensive permitting, record-keeping and reporting obligations. Under RCRA, many regulatory powers have been delegated to state agencies for permitting and enforcement.

Navigation

Activities affecting the waters of the United States are regulated by the EPA, the Army Corps of Engineers, the US Coast Guard and various other agencies such as port authorities, each of which enforce laws such as the CWA and the River and Harbors Act.

Ecology

The Endangered Species Act can prohibit or strictly regulate activities that might materially impair the habitats of threatened and endangered species. For example, a new facility might be prohibited in an area with an endangered plant species, or particular mitigation measures (such as habitat replacement or augmentation) might be required to minimise adverse impacts to an animal species. For offshore exploration, the Fishery Conservation and Management Act governs the effects on the fishing industry, and the Marine Mammal Protection Act does the same for affected mammals. In addition, the Migratory Bird Treaty Act (MBTA) prohibits the taking or injuring of migratory birds, including nests and eggs, and the National Marine Sanctuaries Act authorises the secretary of commerce to designate and protect areas of the marine environment having special national significance. The prohibitions enforced by the MBTA have been applied to oil and gas production pits and other facilities, which can present a threat to migratory birds.

Cultural resources

A number of mandates deal with projects that may disturb or uncover property of cultural significance, including the National Historic Preservation Act of 1966, the American Antiquities Act of 1906, the Archaeological Resources Protection Act of 1979 and the Abandoned Shipwreck Act of 1987.

Health and safety

The OCSLA authorises the DOI to lease offshore tracts for oil and gas exploration and development, and to regulate that development through permitting, inspections and enforcement actions (see question 12). The OCSLA permitting scheme involves extensive health and safety requirements.

The Occupational Safety and Health Administration (OSHA) and state and local governments all enforce rules protecting employees and contractors from workplace injuries. BSEE regulates and enforces safety rules at offshore facilities such as drilling rigs and oil platforms. Record-keeping requirements can be very significant; for example, records of occupational injury must be kept for the duration of the employee's service plus 30 years.

In addition to record-keeping requirements, OSHA imposes certain inspection and safety programme requirements involving mechanical integrity of equipment, hazards analysis and process safety. OSHA has recently revised and strengthened the Hazard Communication Rule, which requires that workers be advised of the presence and threats of chemical products in the workplace. OSHA inspects facilities and has the power to issue citations for violations.See question 34 for additional information on OSHA.

The Chemical Safety Board (CSB), an independent federal agency, has authority under the CAA to investigate accidental releases resulting in a fatality, serious injury or substantial property damages. This authority includes releases occurring at oil-related facilities such as refineries. Although the CSB does not possess enforcement powers under its enabling statute, the board does issue public recommendations and reports that can influence other agency decisions. See question 34 for additional information on the CSB.

Homeland security

The Department of Homeland Security implements requirements relating to safety and security under the Maritime Transportation Security Act of 2002 (MTSA) and the Chemical Facility Anti-Terrorism Standards (CFATS). The MTSA requirements include development of site security plans, designation and management of certain information as sensitive security information and security clearances for personnel. The CFATS interim final rule issued in 2007 requires covered chemical facilities to prepare security vulnerability assessments, which identify facility security vulnerabilities, and to develop and implement site security plans, which include measures that satisfy the identified risk-based performance standards.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The EPA regulates the composition of mobile source fuels and fuel additives at the federal level, although substantial additional regulation of oil and oil products occurs at the state level. Sales of imported oil products that do not comply with EPA standards are prohibited. Uniquely, federal law authorises California to adopt its own fuel standards, which may then be adopted verbatim by other states. California's regulations specify many required elements of fuel composition, such as volatility and aromatics, oxygenate and sulphur content.

Recently, there have been several major federal fuel specification changes. Among these changes are the April 2014 'Tier 3' motor vehicle emission and fuel standards (which require a further reduction in the sulphur content of gasoline and include an averaging, banking and trading (ABT) programme to provide further flexibility), the elimination of the 2 per cent oxygen content requirement under the CAA for reformulated gasoline and the 2012 revisions to the renewable fuels standard programme (RFS2) under the Energy Independence and Security Act of 2007 (EISA) (see question 3). Under the Clean Air Act section 211(o), as amended by the EISA, the EPA is required to annually establish specific annual volume standards for cellulosic biofuel, biomass-based diesel, advanced biofuel and total renewable fuel that must be used in transportation fuel for the following year based on projections from the EIA. In January 2015, EPA adopted a direct final rule making a number of minor amendments to the light-duty Tier 3 vehicle and fuel standards and other various non-road and fuel provisions, including references to the updated MARPOL Annex VI provisions, updating of the test procedure specifications for measuring permeation emissions and diurnal emissions from land-based and marine fuel tanks, and removal of the expiration date for the regulatory provision allowing manufacturers to use the ethanol-based test fuel (E10) specified for certifying engines in California. Also, to resolve litigation brought against EPA, a proposed draft consent decree would establish a schedule for EPA to issue Renewable Fuel Standards (RFS) for 2014 and 2015. EPA would propose 2015 volume requirements by 1 June 2015, and by 30 November 2015 would finalise volume requirements for 2014 and 2015. EPA also plans to propose the RFS volume requirements for 2016, and the RFS biomass-based diesel volume requirements for 2017, by 1 June 2015 and finalise them by 30 November 2015. EPA also will re-propose volume requirements for 2014 by 1 June 2015, reflecting the volumes of renewable fuel that were actually used in 2014.

On the state level, California regulators adopted the Low Carbon Fuel Standard (LCFS) in 2009, which regulates the carbon intensity of transportation fuels sold in California in order to reduce the amount of greenhouse gas emissions. In 2011, the US District Court for the Eastern District of California held that the LCFS regulations discriminated against non-California fuels by assigning them a higher 'carbon intensity' (due to the need to transport such fuels into California) and thus were an unconstitutional restriction on commerce between California and other states. However, in September 2013, the Ninth Circuit Court of Appeals reversed that decision and upheld the LCFS as not discriminatory against out-of-state fuels on the face of it. In June 2014, the US Supreme Court declined to review the Ninth Circuit ruling. In addition, 11 other states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont) signed a memorandum of understanding to work toward adopting a regional low carbon fuel standard and issued a draft programme framework in 2011.

In most cases, fuel composition must be certified by the EPA or the state air authority. These agencies may impose substantial penalties for sale of non-complying fuels and for failure to maintain accurate composition and manufacturing records. The EPA incentivises self-evaluation, self-disclosure and correction of violations by not recommending civil or criminal penalties for entities that promptly address their non-compliance.

Other oil-based products, such as lubricants and solvents, are regulated by the EPA pursuant to the Toxic Substances Control Act (TSCA). The TSCA authorises the EPA to require pre-manufacture notifications (PMNs) for any new chemical substance prior to its being imported to, or manufactured in, the US above a certain threshold amount. In most cases, PMNs must be supported by adequate health and safety data, and the TSCA imposes reporting and record-keeping obligations on manufacturers and distributors of subject chemical substances. Violations of the TSCA can result in civil and criminal penalties, as well as seizure of products manufactured or distributed in violation of the TSCA.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Foreign workers

All employers in the United States, including oil companies, must confirm each newly hired employee's identity and lawful right to work for that specific employer in the intended position. The federal laws requiring this action were established in November 1986 as part of the Immigration Reform and Control Act (IRCA) and apply equally to US citizen and permanent resident workers and foreign national personnel. Recently, certain states, cities and municipalities have enacted additional compliance requirements that businesses must follow to hold business licences within those regions of the country. Failure to properly document the review of appropriate employment verification paperwork can result in substantial fines most often calculated based on the number of personnel employed.

When choosing to hire personnel who are not US citizens nor lawful permanent residents ('green card holders'), it is critical for an employer to understand the rules established by IRCA and the nature of documentation that can be presented by foreign nationals to evidence their lawful right to work in the US for that specific business. Non-immigrant visas, which are temporary in nature and not intended to result in green card issuance, can include visitors, students, trainees and employment categories. Commonly used employment-based non-immigrant visas include:

- the L-1 classification used for executive, managerial or personnel with specialised skills and knowledge who are transferred within a corporate group from a location abroad to a related US subsidiary, affiliate or branch location;
- the H-1b classification used for positions classifiable as 'specialty-occupations', which require college-level degrees in a specific field of study to perform the duties and responsibilities of the position;
- the specialised visas created by treaty for citizens of Canada, Mexico, Singapore, Chile and Australia with similar standards to the H-1b classification; and
- the E classification for executive, managerial or personnel with essential skills and knowledge who are of the same nationality as the intended employer and are nationals of one of 82 countries with whom the US maintains specialised treaties.

In some cases, a foreign national who lacks employment authorisation in the United States can enter in the B-1 (business visitor classification) to represent the interests of a foreign employer. However, that foreign national cannot provide local productive employment while in the United States, but rather can only further the goals of the company abroad.

It is also important to note many recent changes in the law regarding the use of contracted personnel. Although much of the risks and liabilities associated with contract workers are maintained by the company assigning the worker, in recent years the government has increased the responsibilities, notice requirements and many of the liabilities of the company accepting the contract personnel as well.

Labour relations

Employers in oil, as well as other sectors, must comply with a wide range of federal statutes and regulations, including the National Labor Relations Act (NLRA), the Fair Labor Standards Act (FLSA), the Family and Medical Leave Act (FMLA) and the Occupational Safety and Health Act (OSH Act). State and local laws and agencies supplement the federal workplace rules.

The NLRA confers on private sector employees a variety of rights to form unions; to engage in union organisation campaigns; to bargain collectively; and to strike and take other concerted activity. The NLRA also imposes limitations on those rights, and empowers employers to conduct labour relations alone or in concert with similarly situated firms, and is enforced by the National Labor Relations Board. Important labour unions in the US oil industry include the Oil, Chemical and Atomic Workers Union.

The FLSA imposes overtime and minimum wage requirements for certain employees, unless the employee falls within a category of workers who are 'exempt' from these requirements, such as employees that perform certain executive, administrative or professional duties and are paid a designated minimum salary. Specific wage or overtime rules are provided for some particular oil industry employers, such as certain wholesale distributors of refined products. The FLSA is enforced by the Department of Labor (DOL). Many states have their own specific wage and hour requirements, and employers must comply with the requirements that are most protective of the employee.

The FMLA requires larger employers to provide up to 12 weeks of unpaid annual leave for certain employees who have serious health conditions or who desire to care for dependants. An employee who exercises the FMLA right enjoys certain assurances of post-leave employment and protection from retaliation. This statute is also enforced by the DOL.

In addition to federal laws, some states have also passed laws regulating workforce issues. For example, a California law effective in 2014 (Senate Bill 54) requires oil refineries generally to use contractor workforces that are paid union-level wages and that include large proportions of graduates of apprenticeship or equivalent programmes.

The OSH Act created OSHA to set and enforce workplace health and safety standards. OSHA and similar state agencies remain committed to rigorous enforcement of process safety in the aftermath of high-profile refinery accidents, including the 2005 explosion and fire at the BP refinery in Texas City, Texas that killed 15 employees and injured 170 others and the August 2012 explosion at Chevron's Richmond Oil Refinery in Richmond California. Another federal agency, the CSB, focuses on safety within the energy industry and champions what the agency considers inherently safer technologies and the use of 'leading' and 'lagging' process safety indicators to measure operators' safety performance. The CSB's investigation of the Deepwater Horizon incident has also led the agency to re-emphasise the importance of safety culture and oversight in upstream oil and gas exploration and production activities, much the way the agency did in downstream operations after the Texas City disaster. As part of its investigation and final report issued on 5 June 2014, the CSB made recommendations to the BSEE to augment current offshore safety regulations to require operators and other responsible parties to effectively manage all safety-critical elements (SCEs) through independent audits and verification processes, documented performance standards and greater accountability to the regulators. The CSB also made recommendations to the American Petroleum Institute to publish offshore exploration and production safety standards for the identification and management of SCEs.

Additional federal and state agencies enforce risk management programmes under the Clean Air Act and state law that frequently parallel the issues germane to OSHA and CSB. However, these regulatory activities concentrate on manufacturing processes involving certain hazardous substances and are not necessarily tied to workplace protection per se.

Anti-discrimination

Many federal, state and local laws prohibit discrimination in employment on the basis of a 'protected classification' such as race, colour, sex, religion, national origin, disability (mental or physical, including pregnancy), age, Vietnam-era veteran status, sexual orientation, medical condition or genetic information. There may be additional protected categories under state or local law. Even an ostensibly neutral policy that results in a 'disparate impact' on a race, sex or other protected classification can be the basis for a claim, unless the employer can demonstrate the policy is justified by 'bona fide occupational qualifications'. Disparate impact claims can be asserted under federal laws prohibiting age discrimination unless the employee can show that the challenged policy or practice was based on reasonable factors other than age. Statutes prohibiting discrimination based on religion and disability require employers to provide reasonable accommodations so that a qualified employee who falls within the protection of these statutes is able to work. The federal laws include Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, 42 USC section 1981 (prohibiting racial discrimination in employment), the Equal Pay Act, the Rehabilitation Act and the Americans with Disabilities

Act. These statutes are generally enforced by the Equal Employment Opportunity Commission.

The remedies for a discrimination claim can be significant. They can include orders of reinstatement, back and front pay, compensatory damages such as pecuniary losses and emotional distress, and punitive or exemplary damages. Only a few of the anti-discrimination laws have maximum penalties, such as the $300,000 per employee limitation under title VII for compensatory and punitive damages, and applicable state statutes may have no such limitation. Oil industry employers have faced significant claims, both by individuals and by collections of similarly situated employees bringing class actions. For instance, in 1996 Texaco paid over $170 million to settle racial discrimination lawsuits. At the time, it was the largest racial discrimination settlement in the United States.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The income tax regime for exploration and production has numerous special features, whereas transportation, marketing and distribution are generally subject to the same rules facing other industrial businesses. A host of industry-specific deductions apply to upstream expenditures, including pre-drilling exploration costs, intangible drilling costs, accelerated depreciation of oilfield equipment and depletion of subsurface resources. Tax planning is required for optimal acquisition and divestiture of leases and other production interests, such as production payments and farm-ins. State income tax laws supplement these provisions and incentives (though not all states impose an income tax). Some states also impose severance taxes on production.

Federal and state excise taxes are collected on the retail sale of motor fuels. Oil companies are subject to state property tax on holdings of real property and certain personal property; state sales and use tax on certain acquisitions of personal property, and in some cases, services; withholding requirements on distributions to certain foreign shareholders, partners and other payees; and transfer taxes on sales of real property.

The Oil Spill Liability Trust Fund, authorised under OPA, is funded in part through a tax levied on oil companies for barrels of oil produced in or imported into the US.

The principal tax agency is the Internal Revenue Service at the federal level, with customs duties being handled by the US Customs Service, both part of the Department of the Treasury, and state taxes being administered by a variety of agencies.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Crude oil is an international commodity, and as such, its price is determined by international supply and demand factors. Neither the US federal government nor the states regulate the price of crude oil or refined products. More than half of the states have laws or regulations that seek to regulate 'price gouging', particularly during times of declared emergency.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

Two agencies have principal responsibility for enforcing federal competition laws (called 'antitrust laws' in the US): the Antitrust Division of the Department of Justice (DOJ) and the Federal Trade Commission (FTC). Each agency has civil authority to enforce statutes of general application, including the Sherman Act's prohibition against a wide array of restraints of trade, and monopolisation, attempts and conspiracies to monopolise; the Clayton Act's prohibition against mergers and acquisitions, which is likely to substantially lessen competition, as well as exclusive dealing and tying arrangements that unreasonably restrain trade (also prohibited by the Sherman Act); and the Robinson-Patman Act amendments to the Clayton Act, which prohibit price discrimination and related practices resulting in competitive injury. Traditionally, however, only the FTC has enforced the Robinson-Patman Act, and in recent years only on rare occasions. Only the DOJ, however, has authority to pursue criminal investigations for cartel behaviour. The FTC also enforces the Federal Trade Commission Act prohibiting 'unfair methods of competition' and similar offences, and has the option of challenging anti-competitive behaviour before either an administrative tribunal or a federal court.

Many states and some subdivisions also have antitrust and unfair competition acts or a common law antitrust jurisprudence. Under federal antitrust laws (except the FTC Act) and some state regimes, private parties may bring civil lawsuits seeking relief for antitrust violations. Prevailing plaintiffs under federal law may obtain, in appropriate cases, both injunctive relief and compensatory damages, which are automatically trebled, as well as attorneys' fees and costs.

Regulations on concentration of oil lease holdings include BOEM's List of Restricted Joint Bidders, which limits joint bids by two or more companies with high daily average production and the review of winning OCS lease bids by the FTC and DOJ before any bid is formally accepted.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

The DOJ's business review letter programme and the FTC's advisory opinion programmes are sometimes used for comfort on proposed joint ventures, information exchanges and similar concerted activities. The review period can extend many weeks, months, or even longer, from the submission of all supporting data, and the agencies only describe their present enforcement intentions without definitively approving the conduct.

Certain joint ventures, mergers and business purchases are subject to mandatory reporting under the Hart-Scott-Rodino Antitrust Improvements Act (the HSR Act). Reports are made to both the DOJ and the FTC, but the FTC usually takes the more active role for oil industry matters. The parties are prohibited from closing the transaction until expiration of a waiting period for the government to decide whether to seek an injunction. The waiting period is usually 30 days after filing, or 15 days in the case of a cash tender offer, but is extended significantly when an agency issues a request for additional information, commonly known as a 'second request', for data, documents and interrogatory answers. The issuance of such a request suspends the HSR waiting period until 30 days after the parties comply with the request for additional information (10 days in the case of a cash tender offer), although it has become common practice for the FTC to negotiate a 'timing agreement' with the parties providing the government with additional time to review the submission. Unlike in many other jurisdictions, however, neither the DOJ nor the FTC has the ability itself to block a proposed merger at the expiration of the HSR waiting period. Rather, it is necessary for the agencies to seek a preliminary injunction from a federal court pending a trial on the merits of the deal. When the DOJ acts, that trial is typically held in the same federal court as the preliminary injunction challenge. When the FTC acts, however, the trial on the merits is held before a hearing officer, typically an FTC administrative law judge (ALJ), and the ALJ's initial decision is thereafter reviewed by the Commissioners themselves. Companies may appeal against adverse decisions of the Commission to a US court of appeals.

The FTC and DOJ may also challenge transactions that are not required to be notified under the HSR Act or that are reported but that, for one reason or another, the agencies permit to be consummated without challenge in the first instance. While these challenges are the exceptions, not the rule, the agencies have shown an increasing interest in such post-consummation challenges in recent years.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Although the United States is not a signatory to the Law of the Sea Treaty, federal laws and executive orders have established US offshore territorial zones and economic exclusion zones that are comparable to those under the Treaty.

The 1978 protocol to the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL) has spawned several US statutes pertaining to oil tankers, including OPA, the Port and Tanker Safety Act and the Act to Prevent Pollution from Ships.

The US is a member of the World Trade Organization (WTO) and a party to various WTO agreements. These instruments generally prevent

Update and trends

On 26 March 2015, the Bureau of Land Management of the Department of the Interior promulgated new rules regulating hydraulic fracturing operations on federal and Indian lands. The rule was published in the Federal Register at 80 FR 16128, and the final rule is effective on 24 June 2015. The rule establishes new requirements for wellbore integrity, as well as the public disclosure of the chemicals used in these operations through an existing database, FracFocus (managed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission). The rule imposes interim storage requirements for wastewater generated by these operations in above-ground covered tanks and new documentation requirements. The rule is limited to operations conducted on Federal land and thus will not apply to hydraulic fracturing operations conducted on private land and state land, which are usually subject to a form of state regulation. The rule has been challenged in court.

Overhanging the entire oil industry are rapidly falling oil prices. Oil field service companies have been adversely affected by the sudden decline in oil prices, which have fallen by half since the autumn of 2014, and oil drilling activity has also slowed. This price decline is certainly making it more difficult to begin large new energy production projects, especially in segments where operational costs are continually rising. However, reports from the 2015 CERAWeek Energy Conference in Texas indicate that advances in technology have increased production efficiencies, and falling oil prices are likely to stimulate overall demand for oil and LNG, especially for export to emerging foreign markets.

member states from discriminating against imported products and services or between products and services of different member states. There is an exception for free trade agreements such as the North American Free Trade Agreement, which created a zero-duty regime for imports and exports of products among Canada, the US and Mexico. The United States has free trade agreements with a number of other countries.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

The presence of BP, Shell and PDVSA/Citgo demonstrates that foreign investment in oil resources has been welcomed and successful. However, some restrictions exist or may emerge.

Under the Mineral Leasing Act, aliens may hold interests in federal onshore leases only by stock ownership in US corporations holding leases and only if the laws of their country of citizenship do not deny similar privileges to United States citizens. Aliens may not hold a lease interest through units in a publicly traded limited partnership. Foreign-owned and foreign-flagged oil tankers may call at US ports en route to and from foreign destinations. The combination of statutes known as the Jones Act requires that 'coastwise' trade between US ports generally must be conducted by vessels built and flagged in the US and staffed with US crews.

The OCSLA limits foreign staffing of many OCS facilities. Foreign investors must comply with record-keeping requirements of the International Investment and Trade in Services Survey Act.

Section 721 of the Defense Production Act of 1950 empowers a committee of executive branch agencies (collectively known as the Committee on Foreign Investment in the United States (CFIUS)) to investigate whether proposed foreign acquisitions of US businesses pose a risk to the national security of the United States. Upon receiving a recommendation from CFIUS, the president is authorised to determine whether to block the proposed transaction or require divestment if the transaction has already occurred.

Amendments to the statute in 2007 expanded the review factors to include the effects of the proposed transaction on national requirements for energy sources and physically critical infrastructure 'such as major energy assets'. The impact of the CFIUS review is fact-specific depending on the characteristics of the proposed acquisition, and CFIUS may impose conditions on its approval that require the acquiring party to submit to continuing obligations.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

Imports

Imports of crude oil generally are subject to the regulations and standards of the FTC, US Customs and Border Protection, the DOE and the Federal Energy Regulatory Commission. Further, if the import is a consumer product or a hazardous material, the import is subject to regulations and standards of the Consumer Product Safety Commission in the first instance and regulations and standards of the DOT in the second. While in a few limited instances the DOE must authorise importation of petroleum products, generally, licences are no longer required to import petroleum products.

Exports

The Department of Commerce restricts exports of all domestically produced crude oil by requiring a licence for the export of crude oil to all countries, including Canada. Except for a few categories of transactions that are exempted or have a presumption of approval by the Bureau of Industry and Security (BIS), the BIS reviews licence applications on a case-by-case basis. The BIS will analyse the application to determine if the transaction is in the national interest and consistent with the purposes of the Energy Policy and Conservation Act. Relevant criteria include whether the export will be to an 'adjacent' country and whether the United States will receive

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an equivalent amount in return. At present, exports of refined products are not limited in this manner.

Embargoes

The United States maintains economic embargoes on certain countries, including Cuba, Iran, North Korea, Sudan (but not South Sudan) and Syria pursuant to regulations administered by the Treasury Department's Office of Foreign Assets Control. These embargoes can prohibit US persons and foreign persons from engaging in transactions involving the embargoed countries or their companies or nationals, even when nothing will be imported into or exported from the United States. Embargoes also apply to entities and individuals on the List of Specially Designated Nationals, even when they are not operating from an embargoed country.

* *The authors would like to thank Zeeshan Mailk for general assistance with updating this year's chapter, and William Sullivan, Jr, Michael Hindus, Paula Weber, Mark Elliott, Steven Becker, Norman Carlin, Michael McDonough, Brian Wainwright and Michael Sibarium for their specific contributions.*

Venezuela

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General

1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Venezuela is one of the world's largest producers and exporters of crude oil and oil products with an estimated production of approximately 2.3 million barrels per day (bbl/d).

In 2014, Venezuela had the largest proven oil reserves in the world with nearly 298 billion barrels. The next largest proven oil reserves are in Saudi Arabia (266 billion barrels) and Canada (173 billion barrels). The vast majority of Venezuela's proven oil reserves are located in the Orinoco Oil Belt.

Venezuela has developed one of the most effective petroleum infrastructures in the world. It has a large and highly developed extractive and refining infrastructure, among the most advanced and sophisticated in the world. Venezuela's oil export revenues account for a large portion of the country's GDP and for over half of the government's overall revenue.

There is also a distribution infrastructure comprising gas pipelines, distributors and petrol stations, which ensures the secure supply of refined products throughout the country and satisfies the local market requirements while allowing for a high capacity for exporting fuels and lubricants.

Venezuela has always been regarded by its international clients as a secure supplier of crude and products, and is one of the most important providers for the United States and for the rest of Latin America, including the CARICOM countries in the Caribbean. Venezuela has its own tanker fleet to cover a portion of its export sales through long-term and spot contracts. In addition, throughout the last eight years, Venezuela has been supplying crude oil to China, India and Japan.

It can be stated that Venezuela's oil potential has a significant influence in the region's geo-economics.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Venezuela is a net energy exporter; as such, all of its domestic energy needs are satisfied by a combination of domestic oil consumption and hydro-based electricity generation. Hydroelectricity provides roughly 65 per cent of all energy needs in the country. The rest of the energy is supplied by thermoelectric plants with gas and steam turbines as well as diesel-powered generators. In thermoelectric generation, approximately 56.54 million barrels of oil equivalent are consumed every year, of which more than half is methane. As a net petroleum exporter, Venezuela supplies all its domestic oil needs through domestic production.

According to the latest report published by the United States Energy Information Administration, Venezuela consumes 3.3 quadrillion British thermal units of total energy. Oil represents the majority of the total energy consumed, while the use of natural gas has increased in the past five years. Hydroelectric power represents less than 25 per cent of the total consumption, whereas coal represents less than 1 per cent.

3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

According to the business plan, Plan Siembra Petrolera 2013–2019 of the Ministry of People's Power of Petroleum and Mines (MPM) and PDVSA (Venezuela's unlisted state-owned oil company), the state oil policies aim to achieve seven main goals for 2019:

- increase the production capacity of oil to 6 million bbl/d, of which 4 million bbl/d will correspond to the Orinoco Oil Belt;
- increase the refinery capacity to 4.6 million bbl/d;
- increase the natural gas production to 11.947 million cubic feet per day;
- increase the GNL production to 255 bbl/d;
- export a volume of oil and products of 5.6 million bbl/d;
- develop the industrial capacity to produce goods and services required for the core areas; and
- consolidate the transport capacity for crude and products.

4 Is there an official, publicly available register for licences and licensees?

Oil exploration, production, initial transport and storage activities are not subject to licensing. These activities can only be carried out by the government through its wholly owned oil companies (PDVSA or its subsidiaries) or through mixed enterprises, which are joint ventures specially designed to carry out these activities and involve a minimum of participation from the government (through the Venezuelan Petroleum Corporation) of at least 50 per cent of the equity.

Since there is no official, publicly available register for mixed enterprises carrying out these activities, this information is publicly available as it must be approved by the National Assembly and published in the Official Gazette.

5 Describe the general legal system in your country.

Venezuela is a civil law jurisdiction. The rule of law is established in the national constitution and it is generally upheld. Contractual and property rights are usually enforced through the court system, although private arbitration is also available and is constitutionally recognised. The court system consists of the Supreme Court of Justice, high courts, first-instance courts and municipality courts. The Supreme Court is the highest authority within the court system. In certain circumstances, the decisions of high courts given in appellate proceedings can be challenged and reviewed by the Supreme Court of Justice.

Domestic judgments and domestic arbitral awards are easily enforced in Venezuela through the court system. Foreign judgments are effective in Venezuela provided they meet the following requirements:

- they should have been issued in civil or commercial matters or, generally, in matters related to private juridical relationships;
- they should have force of res judicata under the law of the state where they were pronounced;
- they should not relate to in rem rights on real property situated in the Bolivarian Republic of Venezuela or that exclusive jurisdiction to ensure the affair could not have been taken away from Venezuela;
- the sentencing state's courts should have jurisdiction to hear the case under the general principles on jurisdiction established by the Private International Law Statute (Chapter IX);

- the defendant should have been duly served, with sufficient time to appear, and, generally, procedural guarantees should have been afforded to ensure a reasonable possibility of defence;
- they should not be incompatible with a previous judgment having authority of res judicata; and
- a trial with the same object and between the same parties, which commenced before the foreign judgment should have been issued, should not be pending before the Venezuelan courts.

The anti-corruption and anti-bribery regime in Venezuela is set forth mainly in the Venezuelan Anti-Corruption Law (the Law), which came into force on 7 April 2003. Oil sector activities are subject to the same general anti-corruption regulatory framework applicable to all other activities. The Law includes provisions against bribery, attempted bribery, collusion and illegal enrichment of public officials. The Law also criminalises the receipt of extraordinary or valuable gifts by public officials, even when no bribery is involved.

The Law requires as an element of the crime that the gift, profit or reward to be received or promised in exchange for the public official to perform acts contrary to his or her duties, or abstain from performing acts that are part of his or her duties. Delivery of gifts, gratuities or courtesies without an intent to have the public official take or omit a specific action within his or her duties does not constitute bribery under the Law.

The Law defines 'public official' and describes the duty and procedure for public officials to give sworn statements on their assets upon entering and leaving public service. It also defines corruption-related crimes including bribery, illegal enrichment, collusion, etc; certain administrative violations; and the roles of the National Comptroller's Office as the overseeing entity at the administrative level and the Public Prosecutor's Office as the entity in charge of judicial or criminal investigation, prosecution and enforcement of the law.

From a constitutional perspective, corruption-related crimes are not subject to statutes of limitations, and those guilty of committing these crimes are not entitled to any benefits, privileges or procedural advantages.

The following also govern corruption in Venezuela:
- the Law against Organised Crime;
- the Republic's Comptroller General and of the National Fiscal Control System Organic Law;
- the Public Function Statute; and
- the Code of Ethics of the Public Officers.

There are a number of resolutions and other acts that have an impact on domestic public officials, such as the Public Procurement Laws and the Organic Law for Citizens' Power.

Regulation overview

6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The legal regime for oil in Venezuela is framed by the Constitution and by the Organic Hydrocarbons Law.

Aside from the constitutional provisions, hydrocarbon-related activities are subject to the Hydrocarbons Law, published in the Official Gazette No. 37,323 of 13 November 2001, and amended on 24 May 2006 (Official Gazette No. 38,443) and subject to the mandates set forth in other laws, decrees and resolutions.

The fundamental characteristic of the Hydrocarbons Law is that it unifies the hydrocarbon legislation, which hitherto had been dispersed among various legal texts, thus creating serious problems for its interpretation and application, and giving rise to a lack of legal certainty for the most important sector of the Venezuelan economy.

The Hydrocarbons Law specifically repeals the 1943 Hydrocarbons Law, as modified in 1955 and 1967; the Reversion Law of 1971; the Local Market Law of 1973; the Nationalisation Law of 1975; and the Automotive Fuels Law of 1998, as well as any other provision in conflict with this new text.

The organic character of the Law derives from the fact that it consolidates the rules applicable to a vast sector. It is also based on article 302 of the Constitution, which reserves this sector to the state for reasons of national interest and strategy. Moreover, it had to be organic because it repealed other laws of that rank.

Activities related to gaseous hydrocarbons are regulated in the Organic Gaseous Hydrocarbons Law and in the Gaseous Hydrocarbons Regulation.

Venezuelan law provides that expropriation can take place only for reasons of public interest and after due process with proper and timely compensation. Over the past eight years, the government has carried out many nationalisations, performed in different forms, where in some cases the participation of the state or its agencies was requested or increased, project conditions were substantially changed or projects were entirely nationalised. No single pattern has been followed. The Constitution grants equal protection to investments made by foreign and national companies alike, as does the Foreign Investment Law, which grants specific protection rights to investors. In April 2005, the MPM instructed PDVSA to review all operating agreements signed with oil companies between 1992 and 1997. The MPM further instructed PDVSA to take all the necessary actions to convert those operating agreements into mixed companies whereby the Venezuelan government, through PDVSA, would be entitled to majority ownership.

7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

As mentioned in question 4, oil exploration, production, initial transport and storage activities are not subject to licensing. These activities can only be carried out by the government through its wholly owned oil companies (PDVSA or its subsidiaries) or through mixed enterprises, which are joint ventures specially designed to carry out these activities and involve a minimum of participation from the government (through the Venezuelan Petroleum Corporation) of at least 50 per cent of the equity.

With regard to expropriation of private companies, it is worth mentioning that on May 2009, the National Assembly passed an organic law that allows the state to reserve goods and services related to primary hydrocarbon activities. This law allows the government to seize assets and services used in the exploration and production stages. The goods and services subject to nationalisation are:
- the injection of water, steam or gas into oil fields;
- gas compression; and
- those connected with activities in the Maracaibo Lake, namely:
    - transportation boats for personnel, divers and maintenance;
    - barges with a crane to transport equipment, diesel, industrial water and other supplies;
    - tows, flat barges, beacons, cranes, gravel, layout or replacement of pipes and submarine cables;
    - maintenance of vessels in shops; and
    - docks of any kind.

Following the enactment of this law, the MPM published a resolution including a list of assets and services to be taken over by PDVSA, which affected 39 companies that, at the time, were performing services at the Maracaibo Lake.

Venezuelan law provides that expropriation can take place only for reasons of public interest and after due process with proper and timely compensation.

The Venezuelan Constitution grants equal protection to investments made by foreign and national companies alike, as does the Law on Foreign Investment, which grants specific protection rights to investors.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

In November 2011, a Presidential Decree published in the Extraordinary Official Gazette No. 6,058 changed the name of the Ministry of People's Powers for Energy and Petroleum to the Ministry of People's Power of Petroleum and Mines. In addition, this Decree adds all powers related to mining activity in the territory to such Ministry.

The MPM is responsible for hydrocarbons policy formulation, regulation and oversight, and for hydrocarbon activity planning, development and control. These activities comprise hydrocarbon resources development, conservation, exploitation and control as well as market analysis and the setting of hydrocarbon and derivative product prices.

The MPM, as a direct organ of the Presidency of the Republic, is the entity empowered to administer hydrocarbons and, as a consequence, is responsible for the inspection of hydrocarbon-related works and activities.

9 What government body maintains oil production, export and import statistics?

The MPM maintains statistics through data provided by PDVSA.

Natural resources

10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

As provided in article 12 of the Constitution, any type of hydrocarbon reservoir located within the national borders of the country, regardless of Its nature, including those located below the territorial waters seabed and the continental shelf, as well as those located within the limits of the exclusive economic zone, belong to the republic. This provision is echoed in article 3 of the Hydrocarbons Law. There is no legal distinction between subsurface and surface mineral deposits; they are all regarded as belonging to the public domain.

11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Oil exploration activities can be carried out throughout the Venezuelan territory, both inland and offshore. There are no areas within Venezuela's borders that are inherently off-limits to eventual exploration and production activities.

The MPM shall define the geographical areas where operating enterprises shall develop primary activities that include exploration and production. Said areas shall be divided into lots, each with a maximum surface area of 100km^2.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

In accordance with article 302 of the Constitution, the state, through the Hydrocarbons Law, reserves to itself hydrocarbon-related activities for reasons of national interest.

According to article 303 of the Constitution, the state shall keep all of PDVSA's shares or of the entity created for managing hydrocarbon activities. This mandate does not include affiliates, strategic associations and other enterprises incorporated as a consequence of PDVSA's business development.

As per article 12 of the Constitution, hydrocarbon reservoirs existing within the country, regardless of their nature, belong to the republic and are regarded as public domain goods; therefore, they are inalienable and not subject to the statute of limitations.

The hydrocarbons regime and administration is an assigned faculty of the National Public Power, as is the creation, organisation, collection, management and control of hydrocarbon taxation (articles 156.12 and 156.16 of the Constitution).

Contracts entered into by the republic with individuals or corporations, national or foreign, permit involving natural resources (including hydrocarbons) and will incorporate the obligations to preserve the ecological balance, to allow access to technology, to transfer technologies in mutually agreed terms and to restore the environment to its natural state if altered.

Oil development in Venezuela is regulated through a mix of different mechanisms depending on the type of activity. In the case of primary activities (mainly upstream activities), development is carried out by the state through its wholly owned or mixed enterprises.

With regard to refining and industrialisation, these activities are not reserved to the state, and private parties can participate jointly with state-owned companies or separately as long as they follow the corresponding licensing or permit procedures. Existing refining facilities owned directly or indirectly by the state shall remain the state's property through a special reservation provision in the Hydrocarbons Law. In practice, refining is carried out exclusively by divisions and affiliates of PDVSA, while industrialisation (including petrochemicals) enjoys a far broader scope of private capital participation.

Commerce is treated separately, since the Law reserves commerce (both domestic and overseas) of 'natural hydrocarbons' and specific petroleum derivatives selected by decree to the state through PDVSA. Commerce of all other petroleum derivatives is open to the private sector.

Oil exploration and production can only be carried out by the state through its wholly owned oil companies (PDVSA or its subsidiaries) or through mixed enterprises (where the state owns at least 50 per cent of the equity). In this sense, there is no procedure to apply to the government for rights to explore and produce oil. With regard to how rights to explore and produce are granted to mixed enterprises, please refer to question 19.

13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

Oil exploration and production activities are not subject to licensing. These activities can only be carried out by the state through its wholly owned oil companies (PDVSA or its subsidiaries) or through mixed enterprises that are joint ventures specially designed to carry out these activities and that involve a minimum of participation from the state (through the Venezuelan Petroleum Corporation) of at least 50 per cent of the equity.

14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are their any other payments due to the government? Are there any tax stabilisation measures in place?

Royalties are set by law at 30 per cent of oil production.

All natural hydrocarbon volumes extracted from any reservoir shall be subject to a royalty payment to the national treasury of 30 per cent of the result of multiplying the extracted amounts by the market price or by an agreed-upon value or, lacking both, by a value to be set by the National Executive. The President can choose to collect the royalty in kind; in such case, the National Executive may require the developer's services for transport and storage, and shall pay an agreed price for those services.

The National Executive can reduce the royalty rate from 30 per cent to 20 per cent for extra-heavy crude oil development projects in the Orinoco Belt when it has been proven that a reservoir cannot be economically developed with the regular 30 per cent royalty rate in place. The Executive can increase the royalty rate again up to the nominal 30 per cent when it is shown that the reservoir's economics can bear said royalty rate.

Please refer to question 35 for a summary of the special contribution for extraordinary and exorbitant hydrocarbon prices. There are no tax stabilisation measures in place.

15 What is the customary duration of oil leases, concessions or licences?

Exploration and production joint ventures have a maximum term of 25 years, with one extension of 15 years allowed.

The customary duration of refining licences is up to 25 years, with one extension of 15 years allowed.

16 For offshore production, how far seaward does the regulatory regime extend?

The state's authority over reservoirs extends to those located as far as the limit of the economic exclusive zone. The state shall claim sovereignty and will demand compliance with the Venezuelan legal regime over any petroleum activities to be carried out on those reservoirs.

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

There is no difference between the onshore and offshore regimes in order to carry out the activities related to hydrocarbons. According to article 3 of the Hydrocarbons Law, any hydrocarbon deposit found onshore or offshore belongs to the state and they are public domain assets, therefore they are treated equally.

There is no difference between the regimes governing rights to explore for or produce liquids hydrocarbons (ie, crude oil). As mentioned in question 7, activities related to gaseous hydrocarbons are subject to a different regime regulated in the Organic Gaseous Hydrocarbons Law and in the Gaseous Hydrocarbons Regulation.

18 Which entities may perform exploration and production activities? Describe any registration requirements? What criteria and procedures apply in selecting such entities?

The state can carry out primary activities directly through the executive branch, by means of wholly owned companies, or through joint venture companies in which the state has decisive control through its ownership of more than 50 per cent of the capital stock. The companies that carry out primary activities are called operators (article 22 of the Hydrocarbons Law).

The government intervenes directly in the business, leaving behind the role of tax-collector that it had until oil nationalisation in 1975. The state maintains control and has power of decision over the business and operations of the companies in the reserved activities through the legal mandate that the state owns more than 50 per cent of the capital stock, and thus goes further than other systems like the 'golden share', which only confers a legal right to make certain decisions.

The exceptional vehicles for reserved activities are the joint venture companies provided for in article 22, according to articles 33 to 36 of the Hydrocarbons Law. In joint ventures, the state maintains control over all decisions by holding over 50 per cent of the capital stock. Participation of private investors in joint ventures does not require incorporation of a subsidiary or establishment of a branch.

The organisation of joint venture companies, as well as the establishment of conditions for primary activities, will require prior approval by the National Assembly. For this purpose, the MPM will provide information to the Assembly about all pertinent circumstances and conditions, including the special advantages to be provided to the republic. The Assembly can then modify the conditions or establish those it considers to be in the best interest of the republic.

Mandatory conditions include a maximum term of 25 years, with an extension of no more than 15 years, and the shape, orientation and extent of the area where the activities will be carried out. Even if not specified, other conditions apply, such as reversion of assets to the republic upon termination of the rights, and the resolution of disputes and controversies through arbitration or by the courts under Venezuelan law.

The republic does not guarantee the existence of hydrocarbons, nor does it undertake clearance of title. Special advantages for the republic such as higher royalties, taxes and other benefits can be included in the basic documents.

It should be stressed that the Organic Hydrocarbons Law provides that competitive bidding is the primary means for selecting the private party who will participate with the state in the organisation of the joint venture. Through the MPM, the National Executive will set up committees to determine conditions and select the companies for the joint venture. However, the Law also provides that private sector partners can be selected directly (without bidding), subject to the Council of Ministers' approval, for reasons of public interest or other special circumstances. In practice, direct (non-competitive) selection has become the sole manner in which the state selects its partners for joint ventures.

The MPM shall define the geographical areas where operating enterprises shall develop primary activities. These areas shall be divided into lots, each with a maximum surface area of 100km^2.

The National Executive, via decree, can transfer the right to engage in primary activities to the operating companies. It can also transfer property and other rights on real estate or moveable goods of the republic's private domain that might be necessary for efficient operations. The National Executive may also revoke said rights if operators do not perform their obligations, thus preventing the achievement of the goals that motivated the transfer of the rights in the first place.

19 What is the legal regime for joint ventures?

Incorporation of joint enterprises and the conditions that regulate how they perform primary activities require the prior approval of the National Assembly. For that purpose, the National Executive, through the MPM, shall inform the Assembly of all circumstances relevant to said incorporation and conditions, including special advantages provided for the republic. The National Assembly may modify or incorporate any additional conditions.

Minimum conditions required by law are as follows:

- maximum duration of 25 years with the possibility of an extension that shall not exceed 15 additional years. This extension must be requested after half of the period has elapsed and no later than five years before the end of the original period; and
- indication of location, orientation, extension and form of the area where the primary activities will be carried out.

Certain provisions are incorporated even if they are not stated expressly.

Real estate and permanent works, including facilities, accessories and equipment that integrate them and any other goods acquired for the execution of the primary activities, must be maintained so as to be transferred to the republic free from liens and without the right of any indemnification to guarantee the possibility of continuing with the primary activities or ceasing them with the least economic and environmental damage.

Disputes relating to the performance of the activities that cannot be resolved amicably among the parties, including arbitration for such cases allowed by the arbitration law, shall be resolved by the competent courts of the republic in accordance with Venezuelan law.

Venezuela shall not guarantee the existence or the economic feasibility of reservoirs, or the availability of hydrocarbons. Discovery risk shall be borne by the private parties that engage in the primary activities.

The document granting the right to perform primary activities may include special advantages for the republic, like an increase in royalties, utilisation and transfer of advanced technologies, scholarships, technical training opportunities or other human resources development mechanisms.

For the selection of the operator, the National Executive shall organise the necessary committees to set the conditions and to select the enterprises. The MPM may suspend the selection process or even declare it void without giving cause for any indemnification.

The operator may also be chosen directly with the prior approval of the Council of Ministers.

The National Assembly issued a mixed company (joint venture) model agreement that was used in the new public and private mixed companies that were created between the state-owned Corporación Venezolana de Petróleo (CVP) and the former operating agreements operators with CVP holding a mandatory stock majority.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

When a hydrocarbons reservoir extends under areas over which more than one producer is authorised to develop primary activities, the parties shall execute a unitisation agreement that shall be subject to the approval of the MPM. Lacking such agreement, the MPM shall set the development rules.

When a reservoir extends from areas assigned to a developer to unassigned areas, the MPM shall take the necessary measures to preserve Venezuela's rights.

When a reservoir extends from Venezuelan territory to areas under the domain of a bordering country, the reservoir's exploitation will require the execution of a unitisation agreement with the relevant bordering state. Lacking a timely agreement, the National Executive will take the measures necessary to preserve the republic's interests, including the cancellation of primary activity rights.

21 Is there any limit on a party's liability under a licence, contract or concession?

Oil exploration and production activities are not subject to licensing or concession. These activities can only be carried out by the state through its wholly-owned oil companies (PDVSA or its subsidiaries) or through mixed enterprises that are joint ventures specially designed to carry out these activities and that involve a minimum of participation from the state (through the Venezuelan Petroleum Corporation) of at least 50 per cent of the equity.

Mixed enterprises are regulated by the Terms and Conditions for the Creation and Functioning of Mixed Enterprises, published in the Official Gazette No. 38,410 of 31 March 2006. According to these terms, mixed enterprises are subject to the rules set forth in the Venezuelan Commercial Code for stock corporations. According to the Commercial Code, liability of the shareholders of a stock corporation is limited by the amount of the subscribed share capital. Notwithstanding the foregoing, parental guarantees are common practice for the formation of mixed enterprises, as explained in question 22.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

Parental guarantees are common practice in bidding processes pursuant to the selection of partners for incorporation of mixed companies. In this context, when the offer is to be submitted by a participant with a net worth lower than the minimum required, the participant shall present a guarantee of the parent company. The immediate or ultimate parent could offer such a guarantee. The same rule applies to consortia, in which case all of the members shall have a net worth equal to or higher than the minimum required, or the commitments of such members that do not have a net worth equal to or higher than the minimum required shall be guaranteed by a parent company or by another member of the consortium that does fulfil such requirement.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

Private companies are not obligated to use a minimum amount of locally sourced goods, services or capital. On the other hand, the Public Procurement Act, which is applicable to public contractors and mixed companies (joint ventures), provides for a full chapter on measures for the promotion of economic development. Within this chapter, article 11 establishes that the President of the Republic in the Council of Ministers is allowed to order temporary measures to counteract adverse conditions affecting small or medium enterprises (SMEs). These measures will include, among others:

- the establishment of preference;
- the reservation of contracts based on categories or value;
- the use of contracting schemes implying the purchasing of goods with national added value;
- transfer of technology, human resources and scheduled deliveries, which will be a tool for the promotion and development of SMEs; and
- a stimulus and the inclusion of persons and any other community association for work.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

In 2012 the President issued two decrees for the promotion of economic development. The intention of Decree 8,882 is to provide local contractors, within the category of small and medium enterprises, with advantages that allow them to qualify for the submission of offers, even if they do not comply with all the financial requirements, by the use of contracting procedures incorporating national added value (national products and workforce) and expedited procedures for advance and prompt payment.

Decree 8,880 also provides for the reservation of contracts for national SMEs domiciled in the place where the contract is to be performed. The contracts reserved for SMEs are those of procurement and provision of services valued at under 10,500 tax units (approximately US$8,200 calculated at the official SIMADI exchange rate of 192 bolívares per US$1) and those valued at under 24,000 tax units (approximately US$18,750 calculated at the official SIMADI exchange rate of 192 bolívares per US$1) for construction works. As per the procurement, the reservation is only for linen, clothes, shoes and leather products, medical equipment, chemical products and raw materials for construction and machinery. The reserved services are related to maintenance, cleaning, laundry, manufacturing of office furniture, recreation and others of this kind. The construction works reserved for SMEs are those of installation and termination, restructuring and maintenance of civil construction works.

The aforementioned decrees provide for sanctions for non-compliance with these requirements, which include the removal of private contractors from the national contractors registry.

Transfers to third parties

25 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

As stated in questions 12, 17 and 18, exploration and exploitation of liquid hydrocarbons can be only conducted by the state through different types of entities. Private parties are not allowed to directly carry out these activities; they may do so only through joint venture companies (mixed companies) where the state shall hold more than 50 per cent of the capital stock. Hence, no licence, concession or production sharing agreement is granted by the state to carry out exploration and production activities of liquid hydrocarbon.

Any transfer of shares, assignments and change in control by a private party is expressly provided for in the terms and conditions for the constitution and operation of mixed companies approved by the National Assembly.

Any transfer, assignment or encumber of shares in a joint venture or its rights or interests as a shareholder requires prior written authorisation by the MPM, except in the case of a transfer of shares to an entity that is, directly or indirectly, wholly owned by the ultimate parent company of the party making the transfer.

The assignment or transfer of all or part of a joint venture agreement, or any rights or obligations under it, requires the prior written consent given by the other party or parties and by the MPM, except in cases of assignment or transfer to a company that is, directly or indirectly, wholly owned by the ultimate parent of the party making the transfer provided that the transferor remains jointly liable with the transferee.

Change of control also requires approval by the MPM. In cases of breach of this obligation the joint venture shall be terminated and the shares of the breaching party shall be transferred to the state without any compensation.

The process for obtaining the required approval involves a written notification presented by the interested party before the MPM.

26 Is government consent required for a change of operator?

See question 25.

27 Are there any specific fees or taxes levied by the government on a transfer or change of control?

There are no specific fees or taxes levied by the government on a transfer or change of control.

Decomissioning

28 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The legal regime applicable to the decommissioning of oil and gas facilities and pipelines is spread out among different laws and regulations. The Hydrocarbons Law contains general rules that encourage the conservation and protection of the environment.

Accordingly, the terms and conditions for the constitution and operation of mixed companies provide that all mixed companies engaged in activities related to hydrocarbons shall plan and execute every measure necessary to restore the conditions of the granted area and any other affected area, to those of the date on which the decree granting the licence was published. Mixed companies shall remove and dispose of contaminants resulting from the primary activities performed before the conclusion of the period established in the decree unless otherwise instructed by the MPM or the Ministry of People's Powers for Environment and Natural Resources. The decommissioning must be performed in accordance with the instructions provided by the abovementioned ministries, and in the absence of such instructions, according to the applicable standard technical proceedings and regulations generally accepted in the oil industry for such activities.

The liability regime is provided for in the Environmental Criminal Law. According to this Law, the improper disposal or abandonment of hazardous waste or solid waste materials, which may include oil and gas

Update and trends

Venezuela's oil reserves

In the Official Gazette No. 40,392 of 11 April 2014, Resolution No. 30 of the MPM was published, which adds 1.6 million barrels of proven oil reserves, resulting in total proven oil reserves of 298,353 million barrels for the Venezuelan state for 31 December 2013. Proven reserves are the estimated quantities of oil and gas in known deposits which, with reasonable certainty, are expected to be recoverable in the future under existing economic and operating conditions. The inherent uncertainties and limited nature of the data relating to deposits mean that reserve estimates are subject to change over time, as additional information becomes available. Proven reserves do not include additional volumes which may result from the extension of currently explored areas, or from the application of secondary recovery processes not yet tested and determined to be economically feasible.

Proven crude oil reserves are grouped into conventional crude oils (condensed, light, medium and heavy grade crude oils) and extra-heavy crude oil. Eighty-six per cent of Venezuela's proven oil reserves correspond to extra-heavy crude oil (less than 8 degrees API), which are being recovered in conjunction with several foreign companies through mixed companies in the Orinoco Oil Belt and through the application of new technologies for refining; crude oil upgrading to obtain an upgraded crude oil aimed at achieving economically viable production.

The Orinoco Oil Belt is divided into four large areas: Boyacá, Junín, Ayacucho and Carabobo; and these areas are, in turn, divided into 45 blocks (including the areas allocated to the mixed companies). Currently, 24 companies from 19 countries are working with PDVSA in the Orinoco Oil Belt.

The Orinoco Oil Belt contains 1,443,950 million barrels of original oil in place (OOIP), and it is estimated that its recoverable reserves will be 268,560 million barrels, based on the total recovery factor of 20 per cent. Reserves to be certified at the beginning of the project were 235,600 million barrels, of which a total of 57,060 million barrels have been certified until 2007; 73,738 million barrels in 2008; 38,920 million barrels in 2009; 86,282 million barrels in 2010; 949 million barrels in 2011; 400 million barrels in 2012; and 1,495 million barrels in 2013, thus raising official reserves to 258,809 million barrels over the past seven years.

PDVSA's Investment Plan

PDVSA's investment plan for the period 2015–2019 involves US$200 billion. The goal is to raise the crude oil production levels to 6 million bbl/d and the refining capacity to 1.8 million bbl/d. PDVSA intends to fund 81 per cent of the investment plan while the remaining 19 per cent shall be borne by the foreign partners.

The projects to be developed during the period 2015–2019 in order to achieve the main strategic objectives of PDVSA are listed below:

- development of the PIEX integral exploration plan;
- development of the production levels of extra-heavy crude oil both in PDVSA's individual fields (Morichal, Cabrutica, Junín Sur, Boyacá, Ayacucho) and with existing mixed enterprises (Petrocedeño, Petropiar, Petromonagas and Petrolera Sinovensa);
- development of the mixed enterprises Petrojunín, Petrocarabobo, Petroindependencia, Petrovictoria, Petromacareo, Petromiranda and Petrourica;
- development of the TAECA and TAECSO vessel terminals;
- development of the pipeline and storage tanks Junín, Carabobo and Araya;
- development of the industrial complexes Carabobo and Junín;
- development of the infrastructure required for the processing of the early production from the Orinoco Oil Belt;
- development of the thermoelectric plants based on petroleum coke located in the José, Junín and Carabobo complexes;
- development of the Petrobicentenario and Cabruta refineries;
- deep conversion of the Puerto La Cruz refinery and deep and medium conversion of the Complejo Refinador Paraguana;
- development of the Santa Ines and El Palito refineries;
- replacement of the pipeline for the SUMANDES Andes Supply System and construction of the Puerto La Cruz–Maturin pipeline, El Palito–Barquisimeto pipeline and the SUFAZ Falcon-Zulia pipeline for the Supply System;
- strengthening of the crude oil transportation maritime fleet with the incorporation of 24 new vessels;
- strengthening of the gas injection system Monagas (PIGAP I, II and III); and
- procurement of new steam generators in the fields of Tía Juana, Lagunillas and Bachaquero (Zulia state).

facilities and pipelines, is subject to a fine from 300 tax units (US$235,00 calculated at the official SIMADI exchange rate of 192 bolívares per US$1) to 1,000 tax units (US$780,00 calculated at the official SIMADI exchange rate of 192 bolívares per US$1), or imprisonment from one to three years.

29 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

The MPM reserves the right to request security deposits regarding future decommissioning liabilities. However, since primary activities in the oil sector can only be carried out by the state (through PDVSA or its subsidiaries) or through mixed enterprises in which PDVSA controls at least 50 per cent of the equity, it is not a common practice to do so.

Notwithstanding the foregoing, the MPM does request security deposits regarding future decommissioning liabilities for licensees in the gas sector. This security deposit is usually requested in the form of cash deposited in a trust administered by a banking institution. The security deposit must be set up within 90 days of the issue of the licence; the amount is usually set at US$750,000, providing annual increments of up to US$$12 million.

Transportation

30 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Oil transport activities are differentiated in the law depending on which stage (upstream or downstream) of the productive process they occur.

Initial storage and transport of hydrocarbons within the scope of oil exploration and production activities (including transport of hydrocarbons to refining facilities) are regarded as primary activities and can only be carried out by the state, state-owned companies or mixed companies. In these cases, oil transport is not regulated or contemplated as a separate activity from those of the producer.

Transport of natural hydrocarbons (other than initial transport) is regarded as an internal commercialisation activity that can only be performed by the state-owned companies provided for in the law. This restriction also extends to transport of certain specific hydrocarbon derivatives specified by the MPM.

The activities of transportation and distribution of hydrocarbon derivatives for internal consumption (local market) that are excluded from the restriction indicated in the preceding paragraph are classified by law as public service activities that can be carried out by private parties independently but that require a permit from the MPM. Construction, modification, expansion, destruction or dismantling of facilities or equipment destined for these activities requires the prior approval of the MPM.

All parties that carry out transport activities regulated by the law are bound to allow other transporters to use their facilities conditioned to build in available capacity and public interest.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

See question 30.

Health, safety and environment

32 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Petroleum activities are subject to the same general health and safety regulatory framework applicable to all activities derived from labour regulations.

Persons engaged in hydrocarbon-related activities must carry them out in an efficient and continuous manner, in accordance with applicable law and following the best practices available on work safety, hygiene and environmental protection. They must also rely on the best technical and scientific practices available on the rational use of hydrocarbons, energy conservation and maximum final recovery from reservoirs.

Persons engaged in hydrocarbon-related activities must provide the Presidency with all the information it may require regarding said activities. Those persons engaged in primary activities, along with industrial and commercial activities, must maintain and present separate accounts on the former. The Presidency shall preserve the confidentiality of said information upon request of the interested party when appropriate.

Persons engaged in storage, transport and distribution activities must allow other storage providers, transporters or distributors to utilise their facilities when said facilities have spare capacity and public interest demands it. Such shared use shall be carried out on terms agreed between the parties. Lacking such agreement, the MPM shall set the service conditions unilaterally.

Hydrocarbon activities capable of damaging the environment must be preceded by environmental and socioeconomic impact studies (article 129 of the Constitution). The state shall prevent the entry of toxic or dangerous waste into the country.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

See question 32.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Article 32 of the Hydrocarbons Law provides that workers of petroleum state enterprises shall have work stability and that they can only be terminated under justified causes set forth in the Organic Labour Law. This Law also warrants the applicability of existing collective bargaining agreements and other benefits as from the date of entry into force of this Law.

Employees in joint ventures and private enterprises are subject to the general regime set forth in the Organic Labour Law.

Foreign workers must obtain a work visa and will be subject to the Organic Labour Law for the term of their service in Venezuela (including benefits).

The Organic Labour Law states that at least 90 per cent of the payroll (when the payroll has more than 10 employees) must be Venezuelan citizens. Additionally, the Law provides that the remuneration of all foreign personnel must not exceed 20 per cent of the rest of the payroll. If an employer needs to hire foreign personnel accounting for more than 10 per cent of the payroll, the labour inspector may approve a temporary exception to this legal requirement.

The Venezuelan Constitution and the Organic Labour Law prohibit discrimination in any form. There are no special non-discrimination provisions, which is different from the standard constitutional non-discrimination mandate, applicable to the petroleum sector.

Taxation

35 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

All petroleum activities and involved corporations are subject to the ordinary tax regime in force in Venezuela. In addition to the regular tax regime, parties engaged in any hydrocarbon activities are bound to pay the following special taxes:

- surface tax – for any part of a surface area granted under a licence but not in development, a tax of 100 tax units per square kilometre per year. This tax will increase by 2 per cent annually for the first five years and by 5 per cent for subsequent years;
- own consumption tax – 10 per cent of the value of each cubic metre of derivative product that is consumed as fuel for the operator's operations. The value is calculated on the basis of final consumer price;
- extraction tax of one-third of the value of hydrocarbons extracted;
- general consumption tax – between 30 and 50 per cent of the final consumer price for each litre of derivative product sold in the domestic market. This tax shall be paid by the final consumer and the actual percentage shall be set each year in the Budget Law; and
- export registry tax of 0.1 per cent of the sales price on all exported hydrocarbons.

The royalty regime is discussed in question 14.

On 15 April 2008, the Special Contribution over Extraordinary Prices Law of the International Hydrocarbons Market entered into force. As established in this law, exporters of liquid hydrocarbons must pay a special contribution to the National Development Fund (FONDEN) of 50 per cent of the difference between the average monthly price of Brent crude and a threshold of US$70 per barrel. If the average Brent price exceeds US$100 per barrel, the special contribution for any difference in excess of the US$100 threshold will be 60 per cent. The contribution is calculated over monthly export volumes of natural and improved liquid hydrocarbons and derivatives. Any amounts paid to FONDEN under this Law can be accounted as costs by contributors for income tax purposes.

On 18 April 2011, the Special Contribution over Extraordinary Prices Law was replaced by the Special Contribution for Extraordinary Prices and for Exorbitant Prices Law in the International Hydrocarbons Market, which was recently reformed on 20 February 2013. It creates two taxes in the form of special contributions payable to FONDEN: the contribution for extraordinary prices and the contribution for exorbitant prices.

The parties subject to this tax are exporters of liquid hydrocarbons, as well as those mixed capital companies that sell liquid hydrocarbons to PDVSA and its affiliates.

Both contributions provided for in the Law are caused over volumes of liquid hydrocarbons (crude, refined or derivatives) transported abroad for purposes of transfer of property. As in the derogated legislation, exporters can discount from the taxable export volume those volumes imported by them for mixing or transformation in country.

The contribution for extraordinary prices is caused upon exports of liquid hydrocarbons (crude, refined and derivatives) when, in any given month, the average international price of the Venezuelan liquid hydrocarbons basket exceeds the reference price set in the annual budget law, but is less than or equal to US$80 per barrel.

The contribution for extraordinary prices will be 20 per cent of the difference between the Budget Law's reference price and the international average price of liquid hydrocarbons multiplied by the exporter's export volumes for the relevant month.

The contribution for exorbitant prices is caused upon exports of liquid hydrocarbons (crude, refined and derivatives) when, in any given month, the average international price of the Venezuelan liquid hydrocarbons basket exceeds US$80 per barrel.

The contribution for extraordinary prices will be calculated as follows:

- when the exorbitant prices are greater than US$80 per barrel, but less than US$100 per barrel, the contribution rate will be 80 per cent of the price difference for the tranche;
- when the exorbitant prices are greater than US$100 per barrel, but less than US$110 per barrel, the contribution rate will be 90 per cent of the price difference for the tranche; and
- when the exorbitant prices are greater than US$110 per barrel, the contribution rate will be 95 per cent of the price difference for the tranche.

As was the case under the Special Contribution Law of 2008, the tax declaration is made to the MPM and payment is made each month directly to FONDEN in foreign currency.

Commodity price controls

36 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Domestic and external commerce in crude oil is reserved to state-owned operator PDVSA. There are no specific regulations restricting or imposing specific pricing policies for PDVSA with regard to crude oil.

Domestic commerce in certain oil derivatives may be reserved to the state-owned operator through an executive decree.

Domestic prices for all oil derivatives are set by the National Executive.

PDVSA manages trade in crude oil on the basis of international prices negotiated for each relevant contract (long-term, short-term or spot-market, as the case may be).

However, the government has recently entertained the idea of taking its royalty payment from PDVSA in kind (that is, in crude oil) and disposing of it on the international market directly.

An aside must be made regarding OPEC. As a co-founder and member, Venezuela engages in the supply and price-influencing policies spearheaded by OPEC, and has sought consistently to maintain international crude oil prices within a specific band through supply control. However, there is always the question of whether this policy sets prices or rather follows the price behaviour exhibited in the commodities and futures markets.

Competition, trade and merger control

37 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

Although the Hydrocarbons Law assigns all planning and oversight functions on hydrocarbon activities to the MPM, it does not address competition issues directly, so reference must be made to the general regime set out in the Decree Law Against Monopoly (the Antimonopoly Law).

The governmental authority in charge of competition protection and oversight is the Superintendency against Monopoly. It enjoys functional independence and is administratively ascribed to the Ministry of Commerce.

The superintendency is competent to investigate anti-competitive practices and build the corresponding administrative files on said matters. It decides whether such practices have actually taken place and takes the necessary measures to end the anti-competitive practices. The superintendency also imposes applicable penalties in the event of breaches of the relevant legislation.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

There is no special procedure set forth in the Antimonopoly Law for authorisations, issuance of exemptions or for cautionary activity assessment.

Therefore, if an interested party wants the Superintendency against Monopoly to determine whether an intended action would violate competition standards, the applicable procedure would be the one set out in the Organic Law on Administrative Procedures, which defines the standard governmental procedure and its terms.

The Organic Law on Administrative Procedures provides that the ordinary procedure will last up to four months, with the possibility of a two-month extension.

International

39 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Treaties and multilateral agreements executed and approved by Venezuela have direct application and become law, and are thus mandatory and capable of modifying pre-existing domestic legislation.

In addition, regulations issued by the legislative bodies of the regional integration system are of immediate and direct application, require no subsequent approval and become domestic law upon issuance.

However, a special mention must be given to OPEC and Venezuela's participation therein. As a member of OPEC, Venezuela submits to production quota-setting agreements reached within the organisation. These quota agreements also bind and affect joint ventures and foreign companies executing primary activities in Venezuela as provided by article 6 of the Hydrocarbons Law, which states:

> *The decisions to be adopted by the Republic as a result of international treaties or agreements on hydrocarbon matters subscribed by the Republic shall apply to those that perform the activities to which this Law refers.*

Venezuela is also a member of Petrocaribe, which is an oil alliance of a number of Caribbean states along with Venezuela in order to purchase oil on conditions of preferential payment. The alliance was launched on 29 June 2005 in Puerto La Cruz, Venezuela. The agreement was initiated with the aim of achieving solidarity with other neighbouring countries. The payment system allows for purchase of oil at market value for 5 per cent to 50 per cent up front with a grace period of one to two years; the remainder can be paid through a 17- to 25-year financing agreement with 1 per cent interest if oil prices are above US$40 per barrel.

40 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

See questions 18, 19 and 25.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

According to the Hydrocarbons Law, cross-border commerce in crude oil is reserved to state-owned oil companies.

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Oil Regulation
ISSN 1742-4100

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