Oil Regulation 2020

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LEXOLOGY®
Getting The Deal Through

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Lexology 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 Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Oman.

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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.

Lexology 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 Mayer Brown, for his continued assistance with this volume.

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For further information please contact editorial@gettingthedealthrough.com

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Argentina

Hugo C Martelli and Bernardo Bertelloni
Martelli Abogados

GENERAL

Key commercial aspects

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

As of 31 December 2018, Argentina has proven oil reserves of 379.796Mm3 and probable oil reserves of 163.257Mm3 (calculated at the end of the fields' useful lives). The key industry players are YPF, Pan American, Chevron, Tecpetrol, Wintershall, Sinopec, Total, Shell, Sipetrol, Pluspetrol and Capsa.

As of 2010, the key players started developing unconventional operations in the Province of Neuquén (where the Vaca Muerta and Los Molles formations are located), forcing changes to the existing legal and regulatory framework (extending the exploration and evaluation terms, increasing their acreage through the acquisition of adjacent areas, or by unifying two or more blocks into multi-block evaluation or pilot project commitments, among others).

Energy mix

2 | What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

As of 31 December 2018, the country's energy needs are covered as follows:

- hydrocarbons – 86.5 per cent (oil, 31.2 per cent; natural gas, 54 per cent; mineral coal, 1.3 per cent);
- hydroenergy – 4.3 per cent;
- vegetable oils – 4 per cent;
- nuclear fuel – 2.1 per cent; and
- other sources – 3.1 per cent.

About 85 per cent of the of Argentina's petroleum product needs are supplied by domestic production.

Government policy

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

Pursuant to article 3 of Hydrocarbons Law No. 17,319; article 2 of Law No. 26,197 (the Short Law); and article 2 of Law No. 26,741 (the Hydrocarbons Sovereignty Law), the federal executive branch establishes the federal policy applicable to the exploration, exploitation, refining, transportation and marketing 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 was transferred from the federal government to provincial governments.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

Each province has its own registry of licences and licensees, and this information is accessible by the public. Registries are maintained by the relevant enforcement authority of each province. In the case of offshore areas, subject to federal jurisdiction, this control is carried out by the Federal Secretary of Energy. No fees are due to obtain this information. The registers are physical, and information is obtained by written request. Information regarding operatorship of each block is publicly available on the Federal Secretary of Energy's website.

Legal system

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.

REGULATION OVERVIEW

Legal framework for oil regulation

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

The National Hydrocarbons Law, No. 17,319, amended by Law Nos. 26,197 and 27,007, is the main body of legislation for oil and gas exploration and production. Despite being of questionable constitutional grounds, the provinces have passed their own laws and regulations on these activities. The transportation, distribution and marketing of gas are independently regulated by Law No. 24,076.

Expropriation of licensee interest

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 that was subsequently ratified by Law No. 26,932 passed by the Federal Congress.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

Exploration permits and exploitation concessions provide a vested right that cannot be terminated without legal indemnification. Nonetheless, the relevant provincial enforcement authority or the federal government, for federal offshore blocks, are entitled to revoke these licences in the event of breach of the permit or concession conditions by the titleholder (article 80 of Law No. 17,319). Titleholders can also partially or totally relinquish, at any time, the acreage of a permit or concession. If an exploration permit is relinquished, the titleholder will be bound to pay any investment amounts committed and not fulfilled (articles 20 and 81 of Law No. 17,319).

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The enforcement authority for the Hydrocarbons Law is the Federal Secretary 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. Provincial state-owned companies are entities separated from the relevant enforcement authorities. The relevant enforcement authorities are entitled to declare the expiration of exploration permits and exploitation concessions for the following main causes:

- failure to pay any annual instalment of the relevant surface tax up to three months after the due date;
- failure to pay royalties up to three months after the due date;
- substantial and unjustified failure to comply with the specified obligations with respect to productivity and investments;
- repeated infringement of the obligations to submit requested information or to facilitate inspections; or
- failure with the obligation to transport hydrocarbons of third parties, or repeated infringement of the tariff regime approved for such transportation.

Failure to comply with the obligations related to permits and concessions not implying a cause for expiration shall be penalised with a fine imposed by the enforcement authority.

Government statistics

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

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

NATURAL RESOURCES

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

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 in existence when the Short Law was enacted have been transferred to the relevant provincial governments until its expiration. International or interprovincial transportation concessions will continue to be subject to federal jurisdiction. Reservoirs located in Argentine territorial waters between 12 and 200 nautical miles off the coast exclusively belong to the federal government. Petroleum rights are independent from surface rights. Oil production belongs to the licensee (the titleholder of an exploration permit or exploitation concession) upon its extraction.

Exploration and production – general

12 | 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.

Exploration and production – rights

13 | How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

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. Companies acquire rights to exploration permits or exploitation concessions through public bids held 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. Companies may also acquire rights to production without acquiring mineral rights on the permits or concessions, which is the case for several permits and concessions granted in recent years by some provinces to their state-owned companies. In these cases, there is room to negotiate the terms and conditions of the association agreement to be executed with the state-owned company.

Government participation

14 | 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.

Despite the above, 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 also established that with respect to the areas already reserved but not yet granted, the association agreements might set forth an exploration term but not during the development stage. In spite of the provisions of Law No. 27,007, some provinces continued reserving vacant areas in favour of their state-owned companies (eg, the province of La Pampa with its state-owned company, Pampetrol SAPEM).

Royalties and tax stabilisation

15 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are 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 taking in to account 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 No. 27,007, projects of tertiary production, extra-heavy oils and offshore, which, because of their productivity, location and other technical and economic unfavourable characteristics, and are approved by the enforcement authority, may be subject to a royalty reduction of up to 50 per cent.

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 the price with no discounts.

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 electricity generation for field operations. In any event, recent Federal Supreme Court judgments have rejected provinces' claims in this regard.

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

Besides any royalties being paid to the provinces or the federal government, holders of exploration permits and exploitation concessions shall pay an annual surface tax to the provinces or to the federal government, depending on whether it was the province or the federal government that granted the licence. Such a payment is paid as a consequence of the provincial or federal domain on hydrocarbon fields.

There are no tax stabilisation measures in place.

Licence duration

16 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 are set out below.

For exploration with a conventional objective:

- first term – up to three years;
- second term – up to three years; and
- extension period – up to five years.

For exploration with an 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 the concession's commencement. 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.

Extent of offshore regulation

17 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. The eminent domain spanning 12 to 200 nautical miles rests with the federal government.

Onshore offshore regimes

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

Authorised E&P entities

19 | 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.

In order to be holders of exploration permits or exploitation concessions, irrespective of the province where the activities are developed, companies must be registered with the Registry of Hydrocarbon Exploration and Exploitation Companies maintained by the Federal Secretary of Energy. Registration with the Registry is also a requirement to be able to be an operator of permits and concessions.

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 upon them. Further, such holders shall assume exclusive responsibility for liabilities associated with exploration and production activities.

Because of the ongoing dispute with the United Kingdom over the Malvinas Islands and companies that operated or currently operate on the Argentine continental shelf through licences or authorisations granted by the Malvinas (Falkland Islands) or British authorities are prevented from doing business in Argentina. The Malvinas Islands dispute has regained importance owing to recent exploration activities carried out offshore of the islands and authorised by Malvinas (Falkland Islands) authorities.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

In order to be an operator of exploration or exploitation blocks, companies must be registered as operators with the Federal Registry of Oil Companies, within the sphere of the Federal Secretary of Energy. To obtain such a registration, companies have to meet technical and financial standards required by Dispositions No. 335/19 and 337/19 of the Federal Sub-Secretary of Hydrocarbons. Registration has to be annually renewed and can be revoked if technical capacity cannot be proved.

Joint ventures

21 | What is the legal regime for joint ventures?

Joint venture agreements could be framed as a 'temporary association' regulated under the Civil and Commercial Code. Such a temporary association is not an incorporated entity; its property does not differ from that of its members but still has to be registered with the Office of Corporations (IGJ) and needs to specify a representative, a domicile and a minimum operating fund for registration. Members of a temporary association can agree to be jointly but not severally liable to third parties. Temporary associations must also be registered with the tax authorities because they are subject to VAT and, in certain cases, to turnover tax. 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 associations, by adding a representative (usually the operator), a domicile and a minimum operating fund.

Reservoir unitisation

22 | 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 enforcement authority. 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.

Licensee liability

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

In Argentina, the general rule is that several liability applies, unless joint liability is expressly agreed by the parties (article 828 of the Civil and Commercial Code). Following that rule, provincial state-owned companies typically impose joint liability on joint venture companies with respect to their concession obligations. Such joint liability is established in the relevant call for bids, and then incorporated to the resulting concession title. But, if provincial state-owned companies are not the titleholders to the concession and the concession is directly granted to third parties, those parties would be severally liable unless the concession title imposes a joint liability.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? 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

Minimum requirements

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

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

Social programmes

26 | Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

Federal Decree No. 929/13 and Law No. 27,007 created a regime for the promotion of the investment for hydrocarbon exploitation in exchange for a commitment to invest US$250 million. To obtain these promotional benefits, concessionaires shall, among other obligations, pay the province where the project is developed a contribution of 2.5 per cent of the initial investment amount of the project, addressed to corporate social responsibility.

Additionally, during recent years the government of the province of Neuquén has granted several unconventional exploitation concessions in exchange for such companies making a certain contribution as corporate social responsibility. Such contributions were not mandatory, but the province negotiated with the concessionaires to include them.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 | 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. Therefore, 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 a right of first refusal in favour of the province is illegal.

Approval to change operator

28 | 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 Registry of Oil Companies, under the control of the Federal Secretary of Energy.

Transfer fees

29 | 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) generally require a signature bonus or additional investment commitments in order to approve a transfer.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

Upon granting of the licence (exploration permit or exploitation concession) all the equipment and facilities existing or to be installed in the block, as well as the buildings and fixed or movable facilities, shall belong to the licensee. If the licensee hires services from contractors, the ownership of the equipment provided by the contractor shall be specified in the relevant service agreement. At the end of the term of the licence, decommissioning rules shall apply.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 | 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 Secretary 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, 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.

Security deposits for decommissioning

32 | 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

Regulation

33 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.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

In Argentina, oil and gas companies are associated through joint venture agreements framed as temporary associations and follow Association of International Petroleum Negotiators' models. Cost recovery is obtained through the sale of the production, made by each partner to the joint venture. If a state-owned company is a party to the association agreement, the cost-recovery mechanism is usually 50 per cent of the production corresponding to such a company until payout.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

The key laws and regulations concerning health, safety and environmental matters are as follows:

- 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 (Superintendencia de Riesgos del Trabajo).

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

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? 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, records 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.

In order for foreigners to be employed in Argentina, a residence permit must be obtained that has a duration of one year. Such a permit or temporary residence may be renewed for three periods of one year, until a definitive residence is obtained after the fourth year. The type of permit must be chosen to take into account the duties to be performed by the person entering Argentina (under an employment agreement with the Argentine company or as a legal representative of the foreign company).

TAXATION

Tax regimes

37 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 (30 per cent) and VAT (21 per cent). 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 many 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.

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;
- the 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 Argentine pesos, with a preference to obtain free availability currency in the Sole and Free Exchange Market.

Only few projects have been approved as a result of this special promotional regime.

COMMODITY PRICE CONTROLS

Crude oil mining

38 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. As a result of measures adopted immediately after the economic crisis in early 2002, the federal government imposed a tax on crude oil exports, raised afterwards successively by means of several additional resolutions. In January 2017, the Argentine National Congress did not extend the validity of article 6 of Law No. 25,561, which established the export tax on hydrocarbons in 2002 for an initial term of five years, then successively extended. As a result, all subordinate regulations on hydrocarbon export taxes (decrees, ministerial, secretarial and customs resolutions) became implicitly ineffective and export taxes on hydrocarbons were implicitly eliminated.

In May 2020, the Federal Executive Branch enacted Decree 488/20 which established, until 31 December 2020 and as long as the international oil price stays below US$45/bbl (Brent price), that sales of oil production made in the domestic market shall be made at a fixed price of US$45/bbl.

Decree 488/20 also established a new export tax mechanism on hydrocarbons: (i) No export duty when the international oil price is equal to or below US$45/bbl; (ii) variable export duty, between 0 per cent and 8 per cent, when the international oil price is between US$45 and US$60/bbl; and (iii) 8 per cent export duty when the international oil price is equal to or above US$60/bbl.

COMPETITION

Competition enforcers

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

Antitrust Law No. 27,442 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 the law states that:

> *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 incentivise the marketing and transportation of hydrocarbons and fuels. In 2015, National Decree 272/15 abrogated the National Commission and several provisions of Decree 1,277/12 referred to market and price regulations of the oil and gas business.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

Law No. 27,442 provides that to verify that an economic concentration does not infringe the prohibition under the Law, it must be notified to the Antitrust Commission when the aggregate 'business volume' of the companies involved in the given transaction exceeds 2 billion Argentine 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 three and six months.

Upon failure to notify the transaction to the Antitrust Commission in due course, the Commission shall be entitled to impose a fine. Additionally, transactions that meet the notification criteria of the antitrust law will not generate binding effects between the parties, and with respect to third parties, until the relevant approval has been obtained.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

Seismic data collected during the term of an exploration permit must be submitted to the relevant enforcement authority. The enforcement authority has no confidentiality obligation regarding the seismic data received (Resolution SE 319/93, Annex I, point 6); therefore, it can disclose the data for subsequent bidding processes (either for the same block or neighbouring blocks).

INTERNATIONAL

Treaties

42 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 New York Convention on the Limitation Period in the International Sale of Goods and its Amendment 1974 and the Vienna United Nations (UN) Convention on the Contracts for the International Sale of Goods 1980.

Argentina has also ratified treaties with several countries for the bilateral protection of investments, which have led to several arbitration claims, pursuant to International Centre for Settlement of Investment Dispute (ICSID) and UN Commission on International Trade Law arbitration procedures, now being pursued. Argentina has not abrogated any of the bilateral investment treaties it has signed. However, during recent years the former federal administration resisted the enforcement of several ICSID awards against the country on the grounds that the awards should be enforced through Argentine tribunals.

Foreign ownership

43 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?

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 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 Federal Secretary of Energy passed Resolution No. 407/07 (replaced in 2019 by Disposition 337), 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 (Falkland Islands) or British authorities.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

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. There are no specific volumetric supply obligations for the local market that prevail over the export rights.

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UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

In October 2019, opposition candidate and member of the Peronist party Alberto Fernández was elected Argentine president, replacing Mauricio Macri. Fernandez is the head of a moderate sector within the Peronist party and formed an alliance called Todos, which includes 15 governors and former president Fernández de Kirchner, who is currently vice-president.

After being elected, Fernández promised to boost the economy by providing greater social assistance and benefits to lower-income sectors. Three months after taking office, the covid-19 pandemic resulted in the government implementing a full national lockdown which has lasted for more than two months and seriously affected the already weak Argentine economy.

Fernández's government has made great efforts to reschedule the repayments of the approximately US$50 billion standby loan taken by Macri's administration with the International Monetary Fund (IMF), and also with private bondholders, specifically those holding bonds subject to foreign law for some US$60 billion. Once an agreement with the IMF and the private bondholders is reached, the government will have to focus its attention on significantly reducing the inflation rate (currently approximately 50 per cent annually), by decreasing the primary fiscal deficit and balancing the external trade balance.

It is expected that under the new administration, Argentina's large conventional and non-conventional oil and gas resources (Vaca Muerta and Los Molles formations) will continue to grow and attract the attention of local and international players. Argentina has a broadly developed transportation infrastructure, and technical and professional capabilities to foster such growth.

Argentina has significant legal tools to protect international investments, such as bilateral investment treaties with most developed countries, and a legal and regulatory framework based on private enterprise and free-market policies.

Brazil

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GENERAL

Key commercial aspects

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

Concession regime and production sharing regime

Before 1995, the exploration and exploitation of oil and gas reserves were federal government monopolies carried out exclusively by the federal government-controlled company 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 bodies, such as the Brazilian National Oil, Natural Gas and Biofuels Agency (ANP) and the National Energy Policy Council (CNPE).

The CNPE was created with the main purpose of fostering rational use of the nation's energy resources, reviewing energy matrixes for different Brazilian regions and setting guidelines, while the ANP was created 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 in a concession regime.

In December 2010, three separate laws, including Law No. 12,351/2010 (Pre-Salt Law) entered into force addressing the exploration and production 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 federal 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 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 rights to explore and develop blocks within the pre-salt area. The 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.

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 bidding rounds focused on blocks located at mature basins and inactive areas with marginal fields. The environmental feasibility of these blocks and areas must be assessed by 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 ANP Resolution No. 32/2014, and list small players as the companies qualified as operator 'D' or 'C', and whose production does not exceed an annual average of 1,000boe/d. In turn, medium-sized players are those qualified as operator 'B' or 'C', and production does not exceed an annual average of 10,000boe/d. Note that, for the purposes of calculating the production of the companies, the ANP considers the production of their corporate group, either in Brazil or abroad. As a result, in 2019 the ANP held a permanent bid round of mature blocks, whereby the ANP offered 273 exploratory blocks and 14 areas with marginal accumulation. The first cycle of the permanent offer resulted in the acquisition of 33 exploratory blocks and 12 marginal accumulation areas, and approximately 22.3 million reais was collected by the federal government from signature bonuses.

Onerous assignment regime

Law No. 12,276 was enacted in conjunction with the Pre-Salt Law. The objective of this Law was to allow Petrobras to attract new investors and to keep the federal government as the main shareholder, holding at least 50 per cent of the voting shares. The law authorised the government to sign the Onerous Assignment Agreement with Petrobras, giving the company the right to explore and to produce up to 5Bboe of crude oil in the pre-salt areas of Atapu, Buzios, Itapu and Sépia.

The federal government's estimate, however, is that the areas could yield another 6Bboe. For this reason, the government decided to offer the rights to explore the exceeding volumes in the largest bid round to date, which occurred on 6 November 2019, in which the areas of Itapu and Buzios were awarded. 69.96 billion reais in signature bonuses were collected. Finally, the government is already planning a second Transfer of Rights Surplus Bid Round aiming at offering Atapu and Sépia.

Market development

Since 1999, following the opening of the market, the ANP has conducted 16 bidding rounds for exploration blocks. After almost five years with no new licensing rounds, on 14 May 2013, the ANP promoted the 11th bidding round, which offered 289 blocks, among which 142 were awarded. In the same year, the ANP promoted the first pre-salt bid round for Brazil's Libra offshore area 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. The first specific round focused on the pre-salt area offshore of Brazil occurred on 21 October 2013; the winner was a consortium led by Petrobras with Shell, Total, CNPC and CNOOC as the other contractors.

Despite low oil prices and the corruption scandal involving Petrobras, the federal government held the first stage of the 13th bidding round for exploration and production of concession areas on 7 October 2015. Initially, 182 onshore and 84 offshore blocks were offered across 10 sedimentary basins: Amazonas, Parnaiba, Potiguar, Recôncavo, Sergipe-Alagoas, Jacuípe, Camamu-Almada, Espírito Santo, Campos and Pelotas, out of which 35 onshore and two offshore blocks were awarded. On 10 December 2015, the second stage of the 13th bidding round offered concessions agreements for recovery and production of oil and natural gas in more than 10 inactive areas with marginal accumulations, out of which nine were awarded.

In 2017, the ANP held the 14th concession regime bidding round, which offered 287 blocks, among which 37 were awarded, the second production-sharing bidding round – concerning areas that are to be unitised with licence areas – and the third production-sharing bidding round.

In March 2018, the ANP promoted the 15th bidding round for exploratory blocks, which resulted in an amount higher than 8 billion reais, setting the highest financial results in the history of concession regimes in Brazil. Together, the fourth and fifth production-sharing bidding rounds that took place in June and September 2018 amounted to nearly 10 billion reais in signature bonuses.

The 16th bidding round for exploratory blocks took place on 10 October 2019, in which 12 blocks in Campos and Santos basins were awarded raising approximately 8.9 billion reais in signature bonuses. The ANP also promoted the sixth production-sharing bidding round on 7 November 2019 raising 5.05 billion reais.

Finally, the government also held the Onerous Assignment Bid Round on 6 November 2019, in which the areas of Itapu and Buzios were awarded and 69.96 billion reais were collected in signature bonuses. As mentioned above, the government is already planning a second Transfer of Rights Surplus Bid Round.

Oil production

Oil production in Brazil has increased considerably in recent years. Brazil produced 668.3Mmbbl in 2007, and in 2017 oil production reached 988Mmbbl, representing a growth of 4 per cent compared with 2016. This increase relates to the extraordinary production in pre-salt areas, which in June 2017 surpassed post-salt production for the first time and in 2018, reached an average of 1.428Mmbbl/d a day. Finally, in 2019, the average production was 944,117Mmbbl/d. The volume of oil reserves in Brazil was approximately 13.4Bboe, the 15th largest amount of proven reserves in the world. According to the ANP, Brazil had more than 100 concessionaires operating in the E&P oil sector, and by the end of 2018, 335 blocks were in the exploration and evaluation phase and 373 fields were in production.

Energy mix

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

According to the Ministry of Mines and Energy (MME), in 2018, oil and its related products represented 34.5 per cent of Brazil's domestic energy supply, while natural gas represented 12.4 per cent. Renewable energy sources including hydraulic, electricity, firewood, charcoal and sugar cane products, represented 45.2 per cent.

According to the latest data published by the Brazilian Energy Balance regarding final energy consumption, during 2018, oil by-products represented 39.3 per cent, electricity represented 18.0 per cent and natural gas represented 7.7 per cent.

In 2018, the country imported 68Mmboe, which represented an increase of 24.76 per cent in comparison with 2017 (in the past 10 years, only 2013 saw the importation of oil increase in comparison with the preceding year). During 2018, oil exports increased by 12.7 per cent, reaching 410Mmboe. In 2018, the volume of oil byproducts imported by the country showed a slight decrease in comparison with 2017, totalling 32.7Mm3, approximately 10 per cent lower.

Even though the country produced over 110Mm3 in 2017, it is still a net importer of oil by-products, which mainly comprise naphtha, diesel and petrol. Note that the importation of oil by-products relates to Brazil's deficiency in refinery capacity, because Brazilian refineries are only capable of refining light oil, whereas the oil produced in Brazil is mainly heavy.

Government policy

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

Pursuant to section 2 of the Petroleum Law, 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 national energy policy for exploration and production of oil and natural gas is set forth in CNPE Resolution No. 17/2007. The main guidelines established by the CNPE for the industry are the following:

- setting a schedule of future bid rounds over many years, whose parameters will adhere to those adopted by the industry worldwide;
- fostering regulatory modernisation, reducing bureaucracy and unnecessarily complex regulation;
- fostering the plurality of players in the Brazilian oil and gas industry; and
- promoting predictability regarding the environmental licensing of petroleum ventures by fostering dialogue between governmental actors.

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, and 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.

Both the CNPE and the ANP are entities linked to the executive branch of the federal government.

Registering a licence

4 Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

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

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

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

Legal system

5 | Describe the general legal system in your country.

Brazil is a constitutional democracy based upon the rule of 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 Brazilian Constitution.

Brazil has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) through Decree No. 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 federal government. This law establishes certain criteria to input responsibility on legal entities, whether national or foreign, for any act of corruption harmful to the federal 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 this criterion, the fine shall vary between 6,000 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.

In relation to environmental pollution, Brazil maintains a polluter-pays principle. In the Brazilian legal system, environmental liability may involve administrative, criminal and civil liability.

REGULATION OVERVIEW

Legal framework for oil regulation

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

The Brazilian oil and gas sector is regulated by general provisions of the Brazilian Constitution and by a number of different federal laws and ordinances and resolutions enacted by the Brazilian National Oil, Natural Gas and Biofuels Agency (ANP).

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

Pursuant to Constitutional Amendment No. 09/1995, the federal government may contract with state-owned or private companies for the exploration and production of oil and gas reserves.

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 royalty.

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 (Pre-Salt Law).

Additionally, it has established:

- the use of a production sharing agreement (PSA) instead of a concession agreement in such areas;
- a pre-emptive right (and not an obligation, as recently amended by Federal Law No. 13.365/2016) for Petrobras to hold a minimum participating interest and be the operator of a pre-salt area;
- a public company (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 the ANP's regulations; and
- the government royalty for the PSA.

Federal Law No. 9,847/1999 and ANP Ordinance No. 234/2003 contain the main rules regarding imposition of penalties, including fines, to companies. In 2014, the ANP enacted Resolution No. 64/2014 changing the criteria used for imposing administrative penalties on reoffending companies. 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 Federal 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 the ANP from time to time, as the main regulator of the activity, are also key instruments for the performance of E&P activities and bind all concessionaires.

Expropriation of licensee interest

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

No law allows the federal government to terminate the concession contract or PSC at its discretion or otherwise to expropriate.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

Both the concession contract and the PSA contain provisions that allow the federal government to terminate the respective granting instrument in the following situations:

- upon lapse of the contract's term of effectiveness;
- upon completion of the exploration phase without performance of the minimum exploration programme;
- upon failure to renew a financial guarantee up to 30 days before its expiration date;
- at the end of the exploration phase, in case there has been no commercial discovery;
- in the event the contractors fully relinquish the contracted area;
- upon failure to deliver the development plan within the term established by ANP; and

- upon refusal of the consortium members to execute, in whole or in part, the unitisation agreement after ANP's decision on that matter.

In addition to these specific assumptions, the concession contract and the PSC state that the federal government may unilaterally terminate the respective instrument in the event of failure by the concessionaires to perform the contractual obligations within the term established by ANP, except if they are lawfully waived by the ANP. Additionally, the federal government may revoke the interest of any given concessionaire that enters into judicial or extrajudicial reorganisation, with no submission of an approved reorganisation plan able to demonstrate to ANP its economic and financial capacity to fully perform all contractual and regulatory obligations.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The Petroleum Law and the Pre-Salt Law establish the regulatory framework for the performance of oil and gas activities. These laws are complementary and set forth the responsibilities of the various governmental agencies involved in the regulation of oil activities:

- 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;
- the National Petroleum, Natural Gas and Bio-fuels Agency 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;
- the Ministry of Mines and Energy (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 state president decides the proposals of the CNPE relating to; and
- the Brazilian Petroleum and Natural Gas Administration Company – Pre-Salt Petroleum is a public company linked to the MME and has important roles, such as the management, audit and supervision of oil and gas activities performed under the PSC regime and the negotiation of unitisation involving unlicensed acreage.

Although the federal government controls Petrobras, Petrobras does not issue any sort of regulation for oil exploration and production and acting as an oil company it therefore conducts activities different from the ANP, CNPE, MME and PPSA.

Of the bodies stated above, only the ANP has the prerogative of directly applying penalties to market agents. Usually, these sanctions are fines in cash, but the ANP may also revoke or terminate the rights or authorisations of any given agent for the exercise of the economic activities under its regulation. From 2011-15, the ANP issued 1,040 penalties, totalling more than 2.6 billion reais.

Government statistics

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

The ANP is the federal 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 Resolution 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

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

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 Brazilian territory are considered assets of Brazil. Despite this, article 177 of the Brazilian Constitution allows the federal government to contract with state or private companies for 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. Note that the transfer of ownership of the oil and natural gas produced under the concession regime takes place at the point of volumetric measurement of the production, which is defined by the concessionaires under the development plan submitted to approval by the Brazilian National Oil, Natural Gas and Biofuels Agency (ANP).

Companies contracted under the PSC regime are entitled to the profit oil and to recover certain costs through the cost oil. Pursuant to the Pre-Salt Law and the PSC, title to the extracted oil is originally given to the contractors regardless of whether at the measuring point or at the production sharing point (to be defined by the contractors in the development plan).

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 Brazilian Constitution, property is subject to 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 unsuccessful negotiations 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 proceedings' instructions led by the ANP, the state president may issue a decree declaring the area public use 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, which is to be defined by the ANP according to article 52 of the Petroleum Law.

Exploration and production – general

12 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 oil and gas fields. In 2015, 93.4 per cent of the domestic production resulted from offshore activities.

In order to perform the above-mentioned activities, the concessionaire must obtain an environmental licence granted by the competent environmental agency, which, for offshore activities, is the Brazilian Institute for the Environment and Renewable Natural Resources Federal Environmental Protection Agency (IBAMA), and, for onshore activities, the relevant state environmental agency. In the event of a bidding round carried out by the ANP, the National Energy Policy Council (CNPE) must observe all legal and environmental restrictions concerning the offered areas.

Further, the Brazilian 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 No. 39/2006 provides that any activity related to the exploration and production of oil and gas in areas within the National Marine Park of Abrolhos is, as a general rule, expressly forbidden, while in the buffering zone of the National Marine Park of Abrolhos, such activities may only be performed by seeking specific authorisation.

Currently, there are also restrictions regarding the production of hydrocarbons through the hydraulic fracking process in the Recôncavo and the Paraná basins, because of preliminary court orders still pending a final decision.

Owing to recent oil spills and accidents, 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.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

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 and the main regime for exploration and production in Brazil) the concessionaire will explore and produce the reserves at its own risk and to its own benefit. The ANP conducts bidding rounds of areas referred to as blocks, which are approved by the CNPE and jointly with the invitation to bid, it publishes in advance to the bidding session the contract models that will govern the operation of granted areas.
- The production-sharing regime (relating to exploration and production on pre-salt areas and areas deemed strategic by the federal government) under which the Ministry of MInes and Energy (MME) concludes with the oil companies and the PPSA (its interest shall be defined at the bidding auctions) a service agreement for the exploration and production of hydrocarbons and receives a part of the production as remuneration for its services. Under the PSC regime, Petrobras has a pre-emptive right to hold a minimum participating interest and be the operator of a pre-salt area.
- A third regime, the 'onerous assignment', applies to Petrobras exclusively and is limited to certain pre-salt areas.
- For bid-round participation in either the concession regime or production-sharing regime, 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. Those interested in participating in the round can offer comments and suggestions on the contract's provisions during a period of public consultation, but the ANP is not obliged to accept them. Once the final version of the respective agreement is approved, its terms are non-negotiable and all consortium members have to submit to it in full.

Government participation

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

Under the PSC regime, Petrobras has a pre-emptive right to hold a minimum participating interest and be the operator in the consortium to be formed with the PPSA and private companies. The costs and investments required for the performance of the PSC will be fully borne by the consortium, excluding PPSA. In spite of this, the federal 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 federal government in such investments must be further regulated by the bid documents or specific legislation, or both.

The PPSA will represent the federal government in the consortium and will be responsible for the management of the PSCs. The 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);
- the PPSA will have qualified voting rights and veto powers over operations; and
- negotiation of unitisation involving unlicensed acreage.

Royalties and tax stabilisation

15 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are 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:

- a signing 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 royalty in the concession regime, are not applicable under the PSC regime.

Concerning the special participation, a controversy has stricken the industry since ANP Resolution No. 25/2013, which gives a broader concept to the term 'field', pursuant to which two or more geologically separate fields may be grouped as a single field based upon broad criteria, and, consequently, more easily trigger the payment of special participation.

Under the PSC regime, the oil company produces oil for the federal 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), excise tax (IPI) and customs duties). In any event, it is also important to note that no bilateral investment treaties are in force in Brazil.

Licence duration

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

In general terms, concessions are granted for a period of 35 years, taking into account all the phases of oil activity.

Typically, the exploration phase used to last from two to eight years, usually divided into two different periods with specific commitments. From the 14th concession bid round onwards, the federal government limited the exploration phase to a single period, lasting from five to seven years.

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

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 the Pre-Salt Law, regardless of the duration of the exploration and production phases.

Extent of offshore regulation

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

Brazil is a state party to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), which provides that the coastal state is entitled to explore the continental shelf and exploit the natural resources located at its seabed and subsoil. Brazil has incorporated UNCLOS rules regarding its maritime boundaries under Federal Law No. 8,617/1993. Article 21 of the Federal Law No. 9,478/1997 (the Petroleum Law) confirms that the federal government may explore and produce oil and natural gas in the Brazilian territorial sea, exclusive economic zone (EEZ), and continental shelf.

Therefore, as a rule, upon being awarded with a granting instrument, companies can explore and produce oil and natural gas reserves and other mineral resources up to 200 nautical miles from the Brazilian coast.

Since 2004, Brazil has been discussing with the United Nations' Commission on the Limits of the Continental Shelf (CLCS) the extension of the Brazilian continental shelf in certain points of the Brazilian coast. Current discussions involve the following areas:

- Southern Region (Pelotas Basin): On June 2019, the CLCS agreed that Brazil could extend the continental shelf in the Southern Region. Now Brazil needs to issue specific legislation to officially extend the continental shelf in this region.
- Equatorial Margin (Potiguar, Ceará, Barreirinhas, Pará-Maranhão, and Foz do Amazonas Basins): CLCS is currently analysing the information submitted by Brazil to extend the continental shelf in this area. Brazil expects that the CLCS issues its recommendation by 2023.
- Oriental and Meridional Margin (Santos, Campos, Espírito Santo, Mucuri, Cumuruxatiba, Jequitinhonha and Camamu-Almada Basins): CLCS will only start analysing this submission after completing its analyses over the Equatorial Margin. If CLCS agrees with Brazil and issue positive recommendations over the Oriental and Meridional margins (as it was submitted), Brazil would extend the Santos and Campos basins in an area near and beyond the pre-salt polygon.

Onshore offshore regimes

18 | 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 from the opening of the market in 1995, the ANP has conducted 14 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. Despite this, some differences, such as local content obligations and payment of compensation to landowners, are found.

For environmental licensing, the competent authority for offshore blocks is IBAMA, while for onshore blocks that do not use the fracking process, the relevant state environmental agencies are competent. As provided in the Federal Decree No. 8,437/2015, IBAMA is competent for the licensing of onshore blocks in the case the production of hydrocarbons is executed through the hydraulic fracking process.

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 federal government, the PSC regime shall apply.

Authorised E&P entities

19 | 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 bidding rounds carried out by the ANP. 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.

Concession regime

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 a non-operator, operator A or B, or C in case it is a successful bidder.

In general terms, a '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 and minimum exploration programme.

Production sharing regime

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 royalty in the concession regime, are not applicable under the PSC regime.

Under a production-sharing agreement, the oil company produces oil for the federal 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 federal government upon signature of the PSC. Through this system, the federal government is able to obtain funds that it would otherwise only have access to upon the prospect's production start-up, 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 has a pre-emptive right to hold a minimum participating interest and be the operator of a pre-salt area. Private parties and even Petrobras are entitled to bid for the remaining participating interest in the PSC consortium or the entirety should Petrobras not exercise its pre-emptive rights.

The winner of the auction will be the company that proposes the highest percentage of interest in the remaining profit oil to the federal government, which will be represented in the consortium by the PPSA. In the event the winning consortium proposes a percentage of federal government profit oil that is higher than the minimum established by the CNPE, Petrobras has a right to walk away.

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 the government royalty.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

The operator of each area is the immediate responsible party of the consortium with the ANP and shall comply with a number of specific technical obligations, provide information to the Agency and undertake responsibility for all practical aspects of the implementation of the E&P activities.

The concessionaires are entitled to designate the operator of the area. Nonetheless, the operator may be removed by the ANP in case of failure to comply with any of its obligations under the contract and if it does not cure its default within 90 days of receipt of the notice from ANP indicating the default, regardless of the potential revocation of the licensee's interests under the concession agreement. In such cases, the concessionaires must designate a new operator, subject to the ANP's approval.

Once removed, the former operator shall transfer over all assets used in the operations, accounting records, files, and other documents related to the concession area and the operations at stake to the property's new operator. As a condition to approve the new operator, the ANP may require the removed operator take the necessary action to transfer all information and other aspects related to the granting instrument, including the performance of audits and inventory at its own expenses.

Joint ventures

21 | What is the legal regime for joint ventures?

During the ANP concession bidding rounds, companies are allowed to bid as individuals or as consortia. Individually, 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. A foreign entity 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 the 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 (the oil and natural gas equivalent to exploration and production costs) reimbursement, subject to payment of government royalty.

In the bidding regime, the PPSA has no participating interest in the rights and obligations of the PSC consortium, but the PPSA is assured of a participating interest of 50 per cent in the voting rights under the operating committee of the PSC consortium. Petrobras has a pre-emptive right to hold a minimum participating interest and be the operator of a pre-salt area. Private parties and even Petrobras are entitled to bid for the remaining participating interest in the PSC consortium. If Petrobras does not exercise its pre-emption rights, other private parties may bid for the entire participating interest in the PSC consortium.

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 reimbursement, subject to payment of government royalty.

Reservoir unitisation

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

The Pre-Salt Law, which established the PSC regime, altered the provisions related to unitisation contained in the Petroleum Law. What follows is a brief summary of those changes and the new regulation surrounding unitisation for 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. It is important to highlight that specific rules for the unitisation procedure of a deposit extending through areas under different legal-regulatory regimes – and the calculation of government royalties in such scenarios – are established in ANP Resolution No. 25/2013, which was amended by ANP Resolution No. 698/2017.
- Concession, the PSC and direct negotiation regimes, which are regulatory frameworks currently in force in Brazil, have different cost and taxation structures, making it hard to reconcile the rules for the payment of government royalties among them. For this reason, Resolution No. 698/2017 establishes that the fiscal regimes must apply independently and proportionally to each tract comprising the unit interval, in accordance with the relevant legal and regulatory rules.
- The unitisation agreement to be entered into in those cases must establish the relevant obligations that must be discharged by parties regarding federal government and third-party payments in accordance with the contracts that govern the licensed areas comprising the unit interval.
- Brazil has not yet experienced a situation of cross-border reservoirs, which denote the negotiation and execution of an agreement between two different countries.

Licensee liability

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

No. Concessionaires are jointly and severally liable before the ANP and the federal government for their obligations under the relevant concession agreement or the PSC, regardless of being an operator or non-operator. The Pre-Salt Law establishes joint and several liability before private third parties too. Note that parent-company guarantees may also be required at the ANP's discretion.

Guarantees and security deposits

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

As with the concession contract or PSA, 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 released upon certification by the ANP that all required minimum exploratory programmes for the exploration period have been performed.

If the 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 a 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.

In spite of this, a performance guarantee (a parent company guarantee) is sometimes required at the 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 the 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 PSA in relation to the ANP.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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

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 goods 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 the Brazilian National Oil, Natural Gas and Biofuels Agency (ANP) for this purpose. The certificates must be delivered to the concessionaires by the suppliers. In early 2017, the MME announced new minimum local content percentages for the production and exploration of oil and gas in Brazil to apply to the upcoming bid rounds. The new percentages reflect a reduction of nearly 50 per cent of the requirements previously considered and are no longer a bid criterion.

The fine to be imposed on oil companies that do not comply with the minimum local content percentages will be reduced from a minimum of 60 per cent of the required percentage that was not achieved (applicable to contracts already signed, as the case may be) to 40 per cent (applicable to future contracts). The maximum fine was also reduced to 75 from 100 per cent of the percentage not achieved by the oil companies.

On 18 January 2016, the federal government enacted Federal Decree No. 8,637/2016, establishing the Pedefor programme to foster competition in the supply chain to E&P companies. The objective was to facilitate the process for E&P companies to achieve their local content commitments through new types of investments and activities. However, the Decree has been revoked by Decree No. 10.087/2019. At the beginning of last year there were some discussions about the reinstatement of the Pedefor programme, however there have been no recent publications on this matter.

Social programmes

26 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

Depending on the possible social and environmental impacts of each E&P activity, environmental bodies may require concessionaires or contractors to establish social programmes as a condition for granting environmental permits. The environmental bodies decide on a case-by-case basis if such social and environmental compensation programmes are required, as there is no general rule listing which activities demand such an approach.

Furthermore, as a mechanism for fostering research, development and innovation, pursuant to the contracts, the concessionaires or contractors are required to invest at least 1 per cent of the gross revenue generated by fields with great profitability or with large production volumes (the same fields where concessionaires are obliged to pay the special participation) and fields within the pre-salt area (under the PSC regime). Since 1998, the resources dedicated to research, development and innovation through this clause amounted to more than 5 billion reais. It is common for E&P companies to invest these amounts in specific programmes created by Brazilian universities to encourage research, new technological development and to establish a research centre in Brazil, in accordance with ANP Technical Regulation No. 3/2015.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 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?

Prior authorisation by the ANP is required for any direct assignment of interests. Only Brazilian companies that satisfy the ANP's requirements for technical, legal and financial qualifications may receive the participating interest in both the concession regime and the PSA regime. In accordance with the provisions of ANP Resolution No. 785/2019, the ANP's approval is not required for a change of control, except if there is a performance guarantee issued by a parent company of the concessionaire, of which the ANP must be informed 30 days as from the filing of the relevant corporate documents with the board of trade.

No fees are required by the ANP and no preferential purchase rights upon transfer are reserved for the federal government, either in the concession regime or in the PSA regime (except for Petrobras' minimum participating interest in the PSC consortium – if its pre-emptive rights, which cannot be assigned, are exercised). The ANP takes between four to six months to approve an assignment, although the timing has recently improved.

In recent procedures, the ANP has requested new guarantees from the assignees, such as a minimum exploration programme guarantee, performance guarantee and decommissioning guarantees, to approve the assignment of participating interests.

In addition to the approval of the Brazilian National Oil, Natural Gas and Biofuels Agency (ANP), the clearance of the Administrative Counsel for Economic Defence (CADE) may also be required if the groups involved in the transaction meet the following revenues threshold as set out in the Brazilian antitrust laws:

- at least one of the groups involved (seller or buyer) registered gross revenues in Brazil in excess of 750 million reais during the fiscal year prior to the transaction; and
- at least one of the other groups involved registered gross revenues in Brazil in excess of 75 million reais during the fiscal year prior to the transaction.

In order to obtain CADE's approval, a fee payment is required. The transfer of licence rights for exploration and the production of oil and gas to third parties is usually analysed by CADE in the fast-track procedure, under which CADE usually takes between 30 to 45 days to approve such a transaction. CADE's approval is required by the ANP as a condition for the ANP's approval.

The procedure to obtain ANP's approval is outlined by ANP Resolution No. 785/2019, which sets forth that after the presentation of the relevant documentation to the ANP, the agency has 90 days to issue the approval, deny it or request further documents as deemed necessary. For the transfer of PSCs, the ANP will issue to the MME (which has the final say on the matter) a recommendation to approve or deny the assignment request.

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

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

No pre-emptive right is reserved to the federal government.

Approval to change operator

28 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 out in the latest bid protocol for qualification purposes, and this transfer is subject to ANP approval, in the case of areas under the concession regime, or to Ministry of Mines and Energy (MME) approval, in the case of pre-salt areas.

Transfer fees

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

No. Except for the CADE fee, if CADE approval is necessary, no other fee is applicable.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

In the PSC and concession regimes alike, the contractors and concessionaires hold title to the facilities and equipment used during exploration, development and transportation activities (or any third party that owns or operates this facility or equipment on behalf of the contractor or concessionaire). Despite this, at the end of the PSC or concession contract, the ownership of the facilities and equipment

may be required to be transferred to the federal government under the responsibility of the ANP if such facilities or equipment are needed for the maintenance of operations in the area or if in the public interest upon completion.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 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 concession is the deactivation of facilities and the return of the field's concession area to the Brazilian National Oil, Natural Gas and Biofuels Agency (ANP). This is a matter that is still relatively untested in Brazil, with some technical and regulatory uncertainties to be faced.

Decommissioning is regulated by the Petroleum Law; ordinances are enacted by the ANP with specific provisions of the concession agreement applicable to the relevant field.

The procedures and costs (which shall include all activities for the final deactivation of oil wells, lines and other assets) for the decommissioning of any oil and gas field must be contemplated by the field's development plan, which is subject to approval by the ANP before the start of production. Once the development plan is approved, the concessionaire is bound to the decommissioning obligations and liabilities provided therein, and those provisions shall be periodically revised throughout the field's production phase by means of the annual work programmes and budgets.

Liability for decommissioning rests with the field's concessionaire and, in case of a consortium, all consortium members are jointly liable towards the ANP. It is also important to note that the decommissioning obligations are subject to specific financial guarantees, which may be in the form of insurance, a letter of credit, provisioning fund, or other forms accepted by the ANP (among which are mortgage, corporate guarantee and pledge of oil production). The guarantee shall be financially sufficient to cover all decommissioning activities, as provided in the field's development plan approved by the ANP.

The Petroleum Law and the concession agreement provide that any and all assets in the concession area that, at the ANP's sole discretion, are necessary to allow further operations in the area, or are deemed to be of public interest, shall be transferred to the federal government's property upon the field's decommissioning.

The ANP has recently started a public consultation to review the regulation and procedures for deactivation of facilities. The proposal of regulation intends to set guidelines for preparation of a deactivation plan by the operators, which must be approved by the ANP. The proposed regulation will also provide further details about the transfer to federal government's property of certain assets, as mentioned above.

Security deposits for decommissioning

32 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 to the 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.

With the purpose of regulating decommissioning and abandonment guarantees, the ANP opened a public consultation on 27 March 2020 to discuss with the industry a new draft resolution on this matter.

Pursuant to the proposal presented by the ANP, the amount to be secured by the decommissioning guarantee must correspond to the decommissioning costs and must be calculated pursuant to a progressive investment model. This is a methodology created by the ANP to calculate the amount to be secured by the concessionaire. It considers the total estimated costs for the decommissioning activities, proven and probable oil reserves, duration of production phase, estimated completion date for the decommissioning activities and accrued production.

Each type of decommissioning guarantee accepted by the ANP will be governed by its own specific rules, and concessionaires shall be granted one year (counted from publication of the new resolution) to adapt to the new rules.

The decommissioning guarantees may be enforced by the ANP upon termination of the concession contract, or upon breach of a facility deactivation programme.

TRANSPORTATION

Regulation

33 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 Resolution No. 811/2020 provides regulation for the maritime transportation of crude oil and its by-products, while ANP Resolution No. 52/2015 sets forth the basic rules for the construction and operation of transportation facilities.

In addition, and without prejudice to the ANP regulation, the transportation of crude oil on the seas is subject to regulation of the National Waterway Transportation Agency (ANTAQ). According to the applicable rules, only Brazilian navigation companies authorised by the ANTAQ may perform waterway transportation within the country, and the charter of foreign vessels may be conditioned to prior authorisation from the ANTAQ.

Finally, tanker truck transportation in Brazil is also regulated by the National Transportation Agency.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

In the event of a commercial discovery, contractors will be entitled to recover a certain share of the oil and gas produced corresponding to the costs and investments made by such contractors in the execution of the activities of exploration, evaluation, development, production, decommissioning of the installations and expenses with research and development provided by the PSC – the cost oil.

The recovery costs related to such activities are subject to specific items, limits, terms and conditions established in the PSC. In general, recoverable costs cover the acquisition and transportation of

raw materials, geophysical data, acquisition, leasing and chartering of services and goods, costs incurred with equipment, insurance, maritime operations and personnel costs directly linked to operations, among others. Certain costs incurred by the operator not expressly provided by the PSC, or not necessarily related to operations, may also be recovered, as provided by the PSC.

In addition, the PSC sets forth specific items not recoverable under the PSC regime:

- government royalty;
- commercial royalties paid to affiliates;
- financial payments, loans, fees, etc;
- permanent assets not related to operations;
- legal fees and expenses;
- administrative sanctions and penalties of any nature;
- costs arising from events of force majeure or act of god that affected goods or equipment (including wilful misconduct or gross negligence);
- tax on income and on acquisition of goods and tax credits (under specific cases); and
- costs related to the sale and transportation of oil and natural gas, excluding those necessary for production flow.

The recoverable cost oil is determined and approved by contractors under the operating committee and validated by the PPSA, which is also responsible for managing and monitoring the amounts credited as cost oil by contractors. During the first two years of production, the contractors are allowed to recover monthly cost oil limited to a share of 50 per cent of the gross production of hydrocarbons and 30 per cent on subsequent years for each development module. The share of cost oil may be raised back to 50 per cent in the event the costs registered as cost oil are not recovered within two years following the beginning of production, in which case, the 50 per cent share will be in force until the incurred costs are fully recovered.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

The Brazilian National Oil, Natural Gas and Biofuels Agency (ANP), Brazilian Institute for the Environment and Renewable Natural Resources Federal Environmental Protection Agency (IBAMA) and state environmental regulatory agencies are responsible for safety and environmental regulations regarding upstream activities. The IBAMA is competent for offshore blocks and unconventional oil and gas exploration, while the state environmental agencies are competent for onshore blocks that do not use unconventional methods. Being the oil and natural gas regulatory body, the ANP supervises compliance with environmental standards.

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

In addition, there are specific environmental licences applicable to upstream activities, such as:

- seismic research;
- drilling; and
- preliminary production.

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

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

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 these 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, as well as the obligation to repair any environmental damage in the civil sphere.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? 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, ensuring that two-thirds of employees are Brazilian and one-third are foreign in every branch, main branch or agency. This proportion shall also be observed with respect to the payroll whereby the remuneration received by foreign employees shall observe the same proportionality relative to the number 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. In the case of a technical visa, the Brazilian National Immigration Council requires a technical services agreement or a cooperation agreement signed between the Brazilian company and the foreign company. In the case of a temporary visa with an agreement of employment, the main document to be analysed by the Brazilian National Immigration Council is the employment agreement signed between the foreign individual and the Brazilian company.

To this end, the following allow foreign employees to work in Brazil:

- a residence permit granted to a foreign citizen taking a position in a Brazilian company;
- a temporary visa granted to a citizen taking a job offer formalised by a legal entity active in Brazil.

Law No. 13.445/2017 provides the applicable penalties in the event of non-compliance with the immigration laws.

In addition to the above, the ANP also encourages use of the local workforce by establishing minimum local content requirements for the acquisition of services and goods by the concessionaires for their activities.

TAXATION

Tax regimes

37 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 exploration of oil and gas must be taxed by federal income tax, as any other income generated with the export of any other type of goods. The following taxes may apply to oil and gas activities:

- federal taxes:
- import duty (II);
- excise tax (IPI);
- contribution to social security (PIS/COFINS);
- contribution on economic intervention (CIDE); and
- tax on financial transactions (IOF);
- state taxes:
- tax on distribution of goods and services (ICMS); and
- municipal taxes:
- tax on services (ISS).

Other taxes and specific fees (known as taxas) may apply depending on the relevant transaction.

In addition, Brazilian companies may import assets to be used in petroleum activities (equipment and spare parts) through a special system of temporary admission of goods under the REPETRO system. At the end of 2017, the federal government created the REPETRO-SPED which replaces the REPETRO and will be valid until 31 December 2040. In summary, REPETRO-SPED:

- is based on a digital bookkeeping system (Sped):
- introduced new tax incentives to those originally effective under REPETRO;
- introduced two lists of goods eligible for the regime – the first list concerns goods benefiting from federal tax relief on permanent importation only; the second list concerns goods that may benefit from federal tax relief on either permanent or temporary importation; and
- introduced general restrictions for the temporary importation of goods and a specific restriction on importing production platform and FPSO on a temporary basis.

Is important to mention that temporary importations carried out under former REPETRO may remain subject to the rules of REPETRO until 31 December 2020. Asset and goods under REPETRO must be migrated to REPETRO-SPED before expiry of the REPETRO regime (31 December 2020).

Under the REPETRO-SPED 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 export system, by which Brazilian companies are allowed to import 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. 1781/2017 defines which types of equipment and spare parts may benefit from the REPETRO-SPED system.

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

COMMODITY PRICE CONTROLS

Crude oil mining

38 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 environment.

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 royalties 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

Competition enforcers

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

Law No. 12,529/2011 entered into force in Brazil on 29 May 2012.

Under this new regime, the Administrative Counsel for Economic Defence (CADE) became the sole administrative agency in charge of both merger control and antitrust investigations in Brazil. CADE is comprised 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 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 anticompetitive conduct of which it may become aware.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

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.

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 pre-merger 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 commencing 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 has elapsed.

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 an additional 60 or 90 days. During the first year of the new regime, 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.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

According to the Brazilian Constitution, all data and information on Brazilian sedimentary basins are part of the national petroleum resources and are therefore public and federal assets. Therefore, any company that performs data collection in Brazil must provide a copy of the data to the ANP in the form of pre-established standards.

The Exploration and Production Databank (BDEP) brings together all the data already collected by the oil and gas industry in Brazil and is managed by the ANP. ANP Resolution No. 757/2018 regulates the access to this data. The data and technical information acquired in the E&P activities are subject to a period of confidentiality. Confidential data stored in the BDEP is not made available unless the requester is the E&P company itself or the acquiring company. Public data can be accessed by any interested individual or legal entity.

INTERNATIONAL

Treaties

42 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 treaties or multinational agreements. The core directives of the oil sector in Brazil are established under the Brazilian Constitution. Multinational agreements or treaties entered into by Brazil must not conflict with the provisions of the Brazilian 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, Hungary, India, Israel, Italy, Japan, Luxembourg, Mexico, the Netherlands, Norway, Peru, the Philippines, Portugal, Russia, Turkey, Slovakia, South Africa, South Korea, 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 Federal Decree No. 8,003/2013 putting into force a TIEA entered into with the United States.

Finally, Brazil has ratified the New York Convention through Decree No. 4,311/2002. Note that, 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).

Foreign ownership

43 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?

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.

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

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

Crude oil and oil products are freely exportable in Brazil by companies duly incorporated under Brazilian law, in accordance with article 60 of the Petroleum Law. Nevertheless, the export company must be registered before the ANP and authorised in accordance with ANP Resolution No. 777/2019. Also, it is mandatory to have the authorisation of the Secretary of Commercial Trade (SECEX) according to SECEX Ordinance No. 23/2011.

Such 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 ANP Resolution No. 777/2019 have been fulfilled and the quantities and specifications of the hydrocarbons.

Further, the export 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 federal government's control of external business by establishing a one-way flow of information, eliminating parallel control in the operations.

In addition, requirements of the maritime authorities (National Waterway Transportation Agency (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.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

The challenge of making Brazil more attractive for foreign companies and improving competitiveness while preserving the tax payments for states and cities is a balance that made Brazil adopt a new regulatory stance, which has resulted in considerable success in most of the later bid rounds. The ANP plans to hold bidding rounds during 2020 and 2021, as follows:

- the seventh and eighth pre-salt round under the PSC regime, allowing interested parties to bid for areas on the pre-salt;
- the seventeenth and eighteenth round under concession regime;
- the second Onerous Assignment Bid Round, in which the government plans to offer rights for exploration and production in two key pre-salt areas which were not awarded at the first bid round (Atapu and Sépia); and
- the second cycle of the Permanent Offer.

Confirming this trend, Petrobras' divestment programme, which is intended to reduce the indebtedness of the company and generate value for its shareholders, has attracted new oil and gas producers to Brazil and has already announced the sale of several assets, including onshore and offshore fields and refineries. For 2020, Petrobras has announced the following acquisition opportunities: Golfinho and Camarupim Clusters, in the Espirito Santo Basin; Papa-Terra, in the Campos Basin; concessions BM-PAMA-3 e BM-PAMA-8, in the Pará-Maranhão Basin; and Merluza and Lagosta fields, in Campos Basin.

In addition, the Revitalisation Programme for Exploration and Production of Oil and Natural Gas onshore – REATE 2020 – aims to increase the development and implementation of a national policy to foster activities in onshore areas in Brazil. It also seeks to create synergies between producers, suppliers and financiers to increase competitive exploration and production of oil and natural gas onshore. This consolidation of REATE 2020 opens important perspectives with potential for oil and gas production on land in at least 14 states across the country – Alagoas, Amazonas, Bahia, Ceará, Espírito Santo, Maranhão, Mato Grosso do Sul, Mato Grosso, Minas Gerais, Paraná, Piauí, Rio Grande do Norte, Santa Catarina and Sergipe.

As stated above, the ANP has is proposing to issue new regulations on decommissioning activities and guarantees, which will provide further details to a matter that has been subject to discussions for a while.

In view of the covid-19 outbreak, the above-mentioned projects may be amended or postponed.

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GENERAL

Key commercial aspects

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

Denmark comprises the territories of Denmark, the Faroe Islands and Greenland. Since the mid-1980s, domestic oil production and exploration activity across Danish territory have increased dramatically. In 2016, 16 new licences were granted. In 2004, the first Faroese licensing round was launched. The fifth licensing round was concluded in November 2019 and, as of March 2020, has not resulted in new licences being granted. There are currently no licences in force in the Faroe Islands. So far, drilling operations in Greenland and the Faroe Islands have yielded no production activities. This chapter, however, concentrates solely on the oil regulation of the Danish mainland its continental shelf. See the chapters on the Faroe Islands and Greenland for details on the other constituent countries of Denmark.

In January 2019, total reserves and contingent oil resources were calculated to be 128 million cubic metres. Denmark is the third-largest oil producer in Western Europe, trailing only Norway and the United Kingdom.

All productive Danish fields are located offshore in the Danish sector of the North Sea. As of March 2020 there are a total of 19 producing oil and gas fields or approved oil and gas field developments (Tyra and Tyra South East being counted as one field). In Denmark, the Central Graben, 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. However, on 22 February 2018 the Danish government announced that no new oil and gas licences would be awarded for the onshore areas of Denmark and in inner Danish waters. The Danish Subsoil Act was amended in 2019 to include this decision in the legislation.

Since 1983, seven licensing rounds for hydrocarbon licences in the North Sea have been held. The seventh round was concluded in 2016, where 16 licences were awarded to 12 companies. The Danish Energy Agency (DEA) has previously announced that the licensing rounds following the seventh round will be held at roughly one-year intervals (ie, one year after completion of the last licensing round). On 26 June 2018, the DEA announced the opening of the eighth licensing round for Danish offshore areas. Until 1 February 2019, interested oil and gas companies were able to submit their applications to the DEA for new North Sea oil and gas concessions. The DEA received five applications from four oil companies. However, no licences have been granted yet, as the Minister of Climate, Energy and Utilities currently awaits an investigation into the effects of awarding the licences on the economy, labour and climate. As of March 2020, no decision had been taken by the Minister on whether to grant the licences. The Minister's decision is expected later in 2020.

In 2019, the Dan and Halfdan fields represented 54 per cent of the total domestic oil production. In 2015, a total of 9.1 million cubic metres, equal to 157,000 barrels per day, was produced from the then 19 fields, a 5.5 per cent decline compared with 2014. In 2015, 83 per cent of all domestic oil production was carried out by the Danish Underground Consortium (DUC) joint venture, consisting of Total E&P Danmark (31.2 per cent ownership interest), Shell Olie og Gasudvinding Danmark (36.8 per cent), Chevron Denmark (12 per cent) and the Danish North Sea Fund (20 per cent). Recently, Chevron has sold its 12 per cent share to Total and Shell has sold its 36.8 per cent share to Norwegian Energy Company (Noreco). Both sales were approved by the DEA in 2019.

There is one oil pipeline from the North Sea to the onshore processing facilities on the Jutland peninsula. This pipeline is ultimately owned and operated by the partially state-owned company Ørsted (formerly DONG Energy), through Ørsted Oil Pipe A/S (in this chapter, any company belonging to the Ørsted group is collectively referred to as Ørsted). It is the intention that ownership of the pipeline will be transferred to the fully state-owned company Energinet, the Danish transmission system operator (TSO).

Denmark has been self-sufficient in oil since 1993. The degree of self-sufficiency in oil peaked in 2004 and has been falling over the past 14 years. Denmark's consumption of oil is expected to exceed production for the years 2019–2022, owing to a postponement of the commissioning of the Hejre field and the renovation of the Tyra field, while Denmark is once again forecast to be self-sufficient in oil from 2024 to 2026. In 2019, oil production decreased by 11.4 per cent due to the renovation of the Tyra field.

Energy mix

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

39.91 per cent of Denmark's total energy needs are met directly or indirectly by oil. 35.08 per cent are covered by renewable energy (figures for 2019). The major part of the supply was covered by domestically produced oil.

Government policy

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 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 other fossil fuels by 2020. However, the Minister for Climate, Energy and Utilities has stated that the government's goal is to produce as much oil as possible from the North Sea at the same time as fulfilling the 2050 goal.

In March 2016, the government set up an energy commission with the purpose of drafting an overall report with recommendations on Danish energy policy. In April 2017, the commission published a report with its findings. The report focuses on what is necessary to achieve Denmark's long-term goal of becoming entirely independent of fossil fuels by 2050. The recommendations of the report concern sustainable energy and the overall energy supply system in Denmark. Because the aim is to phase out the use of fossil fuels, oil production is not part of the commission's report.

On 29 June 2018, the Danish government signed Energy Agreement 2018 with the support of all sitting parties in the Danish parliament. The focus points of the agreement are greener energy, including greener heating and cheaper, green electricity, more offshore wind energy, more efficient use of energy, research in energy technology and the reduction of CO2 emissions. The agreement sets out initiatives to reduce CO2 emissions from the part of the energy sector that is outside the quota system, with approximately 1.1 to 1.5 million tonnes in the period 2021–2030.

In December 2019 the Danish government together with the other parliamentary parties signed an agreement to adopt a Climate Act with the purpose of fulfilling the Paris Agreement and reducing the greenhouse gas emissions by 70 per cent by 2030. As of March 2020, the legislative proposal is under consideration by the parliament. Although the proposal doesn't contain any provisions on oil-related activities, it sets forward several provisions promoting the usage of renewable energy sources, which could mean a decrease in oil-related activities.

The Minister of Climate, Energy and Utilities has launched an investigation on the economic, labour and climate-related consequences of oil recovery in the North Sea. The results of the investigation could have an impact on whether to grant any future licences for oil and gas recovery and exploitation. The results of the investigation are expected in the second half of 2020.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

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, which is updated regularly.

Legal system

5 | Describe the general legal system in your country.

The Danish legal system is a civil law system based on statutory law adopted by 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 Regulation (EU) No. 1215/2012 (Brussels I), Danish courts are legally bound to recognise and enforce judgments decided by a court in an EU member state.

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 United Nations (UN) and the Organisation for Economic Co-operation and Development (OECD).

The Danish regulation on anti-corruption and anti-bribery complies with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 (Anti-bribery Convention) and the UN Convention against Corruption 2003. 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 Directive 2005/60/EC on money laundering 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 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

Legal framework for oil regulation

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

The Subsoil Act 1981, with later amendments, provides the framework regulating oil and gas exploration and production activities in Denmark, whereas adaptations and more detailed regulations are issued by the Minister for Climate, Energy and Utilities through the Danish Energy Agency (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 hydrocarbons within a defined area 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 and gas may be produced.

Health and safety conditions on offshore installations are governed by the Offshore Safety Act 2015. The Act implements parts of Directive 2013/30/EU on offshore safety (Offshore Safety Directive). The Act generally provides a framework under which the companies involved in offshore oil and gas activities are to handle health and safety issues themselves. The Act includes requirements for compliance with the 'as low as reasonably practicable' principle, appointment of an installation manager and implementation of a management system for health and safety.

Further, as a consequence of the Offshore Safety Directive, the Danish Working Environment Authority (WEA) has, as of 1 January 2015,

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.

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

The Pipeline Act 2014, with later amendments, regulates the establishment and use of the pipeline for the transportation of crude oil and condensate that is brought from the Danish continental shelf in the North Sea to the Jutland peninsular.

The Natural Gas Act 2000 provides the framework regulation on natural gas supply in Denmark. The Minister for Climate, Energy and Utilities issues more detailed regulation.

Expropriation of licensee interest

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.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

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, if production under the licence is permanently stopped, or in the case of bankruptcy of the licensee.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

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 Utilities. The Minister for Climate, Energy and Utilities 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 exercised by the DEA and is focused on environmental, security of supply, competition and public finance issues. 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 the Danish Underground Consortium and in all recent Danish licences. The fund is autonomous from the state.

The general oversight and supervision of oil activities is vested in the Minister for Climate, Energy and Utilities.

The Minister for Climate, Energy and Utilities may revoke the licence if the licensee does not comply with the terms within the licence or the provisions in the Subsoil Act. Furthermore, if certain provisions in the Subsoil Act are not met, the Minister may impose a fine or imprisonment of up to four months.

Government statistics

10 | 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 Social 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

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

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. The licence granted confers exclusive rights on the licensee to explore and to produce petroleum within an area defined in the specific licence and under the terms and conditions stipulated in the specific licence.

The licence entitles the licensee to ownership of the petroleum produced as a result of the exploration. The licensee is free to sell the petroleum produced on the market. The Danish state, however, reserves the right to participate as a co-licence holder (joint venture partner) in any licence granted a holding of 20 per cent of the ownership of the licence through the North Sea Fund. The licence does not grant any kind of ownership or other similar legal title over the covered oil reservoirs (until exploited) or the covered licence area.

At present, there is no oil 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 Danish Energy Agency (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.

Exploration and production – general

12 | 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 the 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 pursuant to 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.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

The government policy for the oil sector is exercised by the Minister for Climate, Energy and Utilities through the DEA.

Exploration and production of oil may only take place pursuant to a licence granted by the Minister for Climate, Energy and Utilities. Further, licences may only be granted following the approval by a special committee set up by the Danish parliament.

Licences for oil exploration and production 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 Union.

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 Utilities 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. However, such a decision cannot apply to production carried out pursuant to a licence granted after 1 January 1995. 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. 661 of 1 June 2018 on Reimbursement. The time frame depends on the extent of the work to be carried out in relation to processing the application.

The DEA issues a model licence that will be used for all the licences granted in the same licensing round. The model licence contains terms for the licence. The terms in the model licence are generally non-negotiable.

Government participation

14 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, the 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 (currently the Ministry of Industry, Business and Financial Affairs) 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.

Royalties and tax stabilisation

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

Pursuant to 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 20 per cent ownership of the licence through the participation in the licence by the state-owned Danish North Sea Fund. Furthermore, a one-off fee must be paid to the DEA both on submission of the application and upon the issuance of the licence (respectively 25,000 and 100,000 Danish kroner in the eighth licensing round).

In Denmark, tax stabilisation measures apply to the Danish Underground Consortium, but other licensees are not subject to any protection in this regard.

Licence duration

16 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 of 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.

Extent of offshore regulation

17 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 and Certain Pipeline Installations (the Continental Shelf Act), Danish law applies to installations for exploration and production activities on the continental shelf.

Onshore offshore regimes

18 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 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.

Regarding onshore activities, the local municipalities and emergency preparedness coordinators must be involved with regard to zoning regulations and emergency procedures.

Authorised E&P entities

19 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. In 2015, the Subsoil Act was amended to include increased requirements for the licensees' financial resources in accordance with the Offshore Safety Directive.

Exploration and production activities may only take place by virtue of a licence granted by the Danish government. Before exploration or production activities can commence, a plan for those 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.

Regulatory powers over operators

20 What controls does the regulatory body have over operators? Can operatorship be revoked?

The supervision of the operators' compliance with the regulations and the terms within the licences is vested in the Minister for Climate, Energy and Utilities. The Minister is authorised to order operators to comply with the provisions within the regulation, including the Subsoil Act.

As part of the supervision the Minister may require the operators to submit samples, data, technical and economic information, etc. Further, as part of the supervising capacity the supervising authority is granted full access to the operators' company. Non-compliance with the requirements in the Subsoil Act may result in a fine or imprisonment of up to four months.

Moreover, the Danish Working Environment Authority carries out supervision within the framework of the Offshore Safety Act. If the Working Environment Authority finds that the operator no longer has sufficient technical and financial capacity to comply with the requirements of the Offshore Safety Act and the Offshore Safety Directive, it will notify the Minister for Climate, Energy and Utilities, who will then notify the licensee. The licensee will assume the responsibilities of the operator from that point and must, as soon as possible, submit the name of a new operator for the Minister's approval.

Joint ventures

21 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 agreement must be approved by the DEA.

The formation and organisation of joint ventures is not governed by any statutory regulation under Danish law.

Reservoir unitisation

22 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 Climate, Energy and Utilities.

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.

Licensee liability

23 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.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

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 on the DEA's website. In 2015, the DEA increased its requirements for the licensees' financial resources, including, if relevant, the security provided, based on new provisions of the Subsoil Act and the Offshore Safety Directive.

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

Minimum requirements

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

There are no requirements about using a minimum of locally sourced goods, services, capital or personnel. As Denmark is a member of the European Union, its statutes and regulations cannot be inconsistent with the rules of, inter alia, non-discrimination and free movement of goods, services, capital and personnel within the European Union.

Social programmes

26 | Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

There are no social programme payment obligations that must be made by a licensee.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 | 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 Danish Energy Agency (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. The expected processing time differs from case to case but is typically several months. The DEA may charge a fee for processing of an application of approval. 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.

Under the joint operating agreement, a withdrawing party remains liable and obligated for its share of all net costs and obligations that in any way relate to the abandonment of joint operations or a sole risk project in which the withdrawing party participated.

Approval to change operator

28 | 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.

Transfer fees

29 | 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.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

The licensee holds title to facilities and equipment used for oil exploration, production and extraction pursuant to the licence.

If the licence terminates owing to its expiry, relinquishment, lapse or revocation, in respect of either the entire area or part thereof, the Danish state is entitled to take over, without consideration, all or part of any facilities, equipment and installations intended for long-term use within the area concerned, as well as any required accessories and materials, including journals and manuals, etc. Moreover, the licensee shall be obligated to ensure that facilities, etc that do not belong to the licensee or that are encumbered with other rights in favour of third parties, are released from any third-party rights, such that they can be assigned to the Danish state without consideration and free of encumbrance.

Transportation of crude oil from the production fields in the continental shelf area of the North Sea is achieved through an upstream pipeline system currently owned by the partially state-owned company Ørsted (but the intention is for the ownership to be transferred to the state-owned company Energinet, the Danish TSO). All licensees that produce oil on the continental shelf of the North Sea must be connected to the upstream pipeline system or any available service pipe unless such a connection is uneconomical or inexpedient. The ownership and use of the upstream pipeline is regulated within the framework of the Pipeline Act.

Third-party access to upstream pipelines that are constructed as part of an oil or gas production project pursuant to a licence granted under the Subsoil Act is regulated in the Subsoil Act and an executive order on third-party access issued pursuant to the act (Order No. 1132 of 5 December 2011). Under this framework, third-party access may be

granted following negotiations between the parties. The process for third-party access to infrastructure in the Danish North Sea is planned to be simplified in order to enhance access.

The Danish regulation on third party access to offshore platforms was amended in 2019 to prevent corporations on both the owner and user sides from taking part in third-party access negotiations. Instead the corporations should only take part in such negotiations from the side where they have the most participant shares.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 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, including:

- the Convention on the Continental Shelf 1964;
- the UN Convention on the Law of the Sea 1982;
- the Convention for the Protection of the Marine Environment of the North-East Atlantic 1992; and
- the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972.

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 DAnish Energy Agency (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.

According to the Subsoil Act, the decommissioning of CO2 facilities requires the approval of the Minister for Energy, Utilities and Climate. Before approving the decommissioning or abandonment of the facilities the Minister ensures that the licensee has fulfilled all relevant obligations in connection to the closure of the facility, including submitting and following the abandonment agreement and decommissioning plan, sealing the storage location and removing the injection facilities.

The licence holders are joint and severally responsible for carrying out decommissioning in accordance with the pre-approved abandonment plan. A licence holder, that has in whole or in part, directly or indirectly transferred its part of the licence to a new party, is secondarily financially liable for the decommissioning obligations of installations that existed at the time of the transfer. 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.

In 2019 the Danish Subsoil Act was amended to include secondary liability for decommissioning costs for a company that indirectly transfers its licence. This assures secondary liability for decommissioning costs during both direct and indirect transfers of the rights.

Security deposits for decommissioning

32 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

Regulation

33 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 Subsoil Act, construction and operation of pipelines may only take place upon the granting of a licence by the Danish Energy Agency (DEA).

Pursuant to the Continental Shelf Act, transit pipelines for oil and gas may only be constructed upon the granting of a licence 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 currently owned by the partially state-owned company Ørsted. All licensees that produce oil on the continental shelf of the North Sea must be connected to the main pipeline or any service pipe constructed by Ørsted. Licensees connected to the pipeline must pay an amount covering the costs of the construction, maintenance and operation of the pipeline. 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 Ørsted 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 European Agreement concerning the International Carriage of Dangerous Goods by Road 1957 and the International Maritime Dangerous Goods Code.

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.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Oil exploration and production activities in Denmark are not conducted under production sharing contracts.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? 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 Danish Energy Agency to the Working Environment Agency (WEA). Since taking over, the WEA has updated or issued new executive orders and guidelines pursuant to the Offshore Safety Act containing more detailed regulation, to ensure compliance with the new Offshore Safety Directive's requirements.

The WEA also oversees the areas of health and safety on onshore oil-related facilities. There is no detailed regulation on onshore oil-related facilities; however, the general legal framework on a working environment applies as laid down 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.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? 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 Danish Energy Agency 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 WEA also oversees the working environment on onshore installations and facilities and conducts control visits.

Besides legislation, 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, European Union, European Economic Area and Switzerland, must obtain a work permit in order to work in Denmark. Work permits are issued pursuant to the Aliens Act by the Danish Immigration Service.

In general, Denmark and Danish employers are obliged to treat EU citizens in a non-discriminatory manner. Further, Denmark and Danish employers are obliged to treat individuals in a non-discriminatory manner pursuant to the European Convention on Human Rights 1950.

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

Tax regimes

37 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 pursuant to the Subsoil Act and other activities in combination therewith.

The taxation rules applicable to the upstream sector were changed from 1 January 2004 and apply to the Danish Underground Consortium'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 22 per cent, respectively.

The Minister for Taxation has the overall responsibility for taxation. However, the Danish Tax Agency is responsible for the administration and collection of corporate as well as hydrocarbon taxes.

COMMODITY PRICE CONTROLS

Crude oil mining

38 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

Competition enforcers

39 What government bodies have the authority to prevent or punish anticompetitive 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 and Consumer Authority (DCCA) the authority to prevent and prosecute anticompetitive practices in connection with the extraction, transportation, refining or marketing of crude oil and crude oil products. Further, the DCCA may also prevent and prosecute anticompetitive behaviour in connection with the pricing of crude oil and crude oil products.

The DCCA 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 DCCA.

The DCCA 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 DCCA or the Competition Council pursuant to the Competition Act may be brought before the Competition Appeals Tribunal. Decisions made by the DCCA or the Competition Council may not be brought before the regular courts until the Competition Appeals Tribunal has rendered a decision in the case.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

Upon notification from an undertaking, the DCCA 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 anticompetitive agreements. Decisions regarding exemptions shall further specify the period for which the exemption is effective and may be granted on specific terms. According to Chapter 8 of the Danish Competition Act, infringements of the act are penalised with daily, weekly or regular fines.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

Ownership of data is not specifically regulated for oil and gas activities. However, according to the Danish Subsoil Act, the Minister for Energy, Utilities and Climate is authorised to require licensees submit samples, data, processing results and technical and economic information. The Geological Survey of Denmark and Greenland (GEUS) and the Danish Energy Agency (DEA) compile all information about the Danish subsoil. In order to fulfil this task all samples, seismic data and other relevant information about the subsoil, which companies procure during their operations under the Subsoil Act, must be submitted to the GEUS and DEA. Detailed regulation regarding this process is issued in Executive Order No. 56 of 15 February 2002.

INTERNATIONAL

Treaties

42 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;
- the World Trade Organization;
- the International Energy Agency;
- the United Nations; and
- the Nordic Council of Ministers.

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 Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). If an arbitral award is recognised in Denmark it can be enforced through the Danish judicial system.

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Foreign ownership

43 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?

No. However, the only indirect requirement is that the North Sea Fund is a joint venture partner with 20 per cent ownership. No local presence is required.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

No rules specifically concerning cross-border crude oil sales or deliveries apply. The terms and conditions for such sales and deliveries are generally subject to the terms of the agreement between the parties and Denmark's general contract law.

Pursuant to the Subsoil Act, the Minister for Climate, Energy and Utilities may decide that the state or a state-owned company shall be entitled to purchase up to half a licensee's ongoing production of oil. However, such a decision cannot apply to production carried out pursuant to a licence granted after 1 January 1995.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

In June 2018, the Danish Energy Agency announced the opening of the eighth licensing round in the Danish part of the North Sea. The areas

offered for licensing are located in the Central Graben, where most productive Danish oil and gas fields are located, and in the adjoining areas further east bounded by the 6° 15' E longitudinal line. The Danish Energy Agency had received five applications by the deadline of 1 February 2019. It was the intention that applicants would be granted an exclusive licence for exploration and exploitation of hydrocarbons in the area. However, before granting the licences the Minister of Climate, Energy, and Utilities ordered an investigation looking into the financial, labour and climate related consequences of granting new licences. The results of the investigation are expected in the second half of 2020, and only after reviewing the results will the Minister conclude whether to grant any new licences.

A proposal for a new Climate Act is currently (June 2020) being processed in the Danish Parliament. The act focuses on an increase in the usage of renewable energy sources to lower greenhouse gas emissions by 70 per cent by 2030. In addition to the Climate Act, the government has proposed several initiatives focusing on, among other things, carbon capture and storage (CCS), the development of power-to-X technology and decreasing the use of fossil fuels in the heating industry to accommodate the 70 per cent goal by 2030. The initiatives are currently being discussed with the other parties of the Danish parliament.

The oil and gas industry in Denmark has been affected by the covid-19 crisis. For example, Denmark has experienced a decrease in demand for oil and gas in the transport sector, especially in relation to the transport of goods by heavy vehicles and aircraft. Moreover, the offshore platforms have experienced difficulties in ensuring enough goods and supplies, as many sub-contractors have closed their businesses for the time being. To this end, Oil Gas Denmark, the trade organisation for the Danish oil and gas sector, has coordinated a task force to address the industry-related problems arising from the covid-19 situation.

Faroe Islands

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GENERAL

Key commercial aspects

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 50,000 inhabitants. Situated roughly halfway between Scotland and Iceland in the north-east Atlantic Ocean, the Faroe Islands are an archipelago of 18 mountainous islands, with a total land area of some 1,400km2 and a sea area of 274,000km2. The legislative and administrative competence concerning mineral resources in the Faroese subsoil has been transferred from Denmark to the Faroese home-rule authorities. To date, there is no oil production in the Faroe Islands.

In 2000, the first Faroese licensing round was launched within a contiguous area covering approximately 14,000km2 located to the east and south-east of the Faroe 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 19,000km2 area offered for licensing consisted primarily of basalt-covered areas to the east and south of the Faroe Islands. In January 2005, the Faroese government granted seven licences to eight companies organised variously 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 drilling. Two of the licences contained stipulations on exploration and appraisal wells during the licences' later phases.

In July 2008, the Faroese government launched the third Faroese licensing round. The total area offered for licensing under the round covered some 38,000km2. The areas that were offered for licensing included areas that had been previously offered for licensing 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 beneath the basalt is limited. In December 2008, the Minister of Trade and Industry awarded three licences to five companies, all of which had previously participated in licences on Faroese territory at the time.

On 17 May 2017, a fourth exploration round was launched. The licensing round was officially opened by the Minister of Trade and Industry in the Faroe Islands. The area comprising the licensing round was situated to the east of the Faroe Islands and was closed on 17 February 2018 with no licences issued. One bid was received but was later withdrawn.

A fifth licensing round opened on 11 July 2019 in conjunction with the 32nd UK licensing round. Both rounds closed on 12 November 2019. As of April 2020, there are no exploration licences in force in the Faroe Islands. It is possible to submit an application for an out-of-round bid. Such an application is subject to the same terms and conditions that were passed for the fifth licensing round.

The Faroese continental shelf remains a relatively unexplored part of the edge of the north-west Atlantic Ocean, and recent developments immediately adjacent to the Faroese-UK territorial waters' boundary have increased optimism. Relatively few exploration wells have been drilled, with existing wells being closely distributed and having only penetrated a limited part of the stratigraphy. The Faroe Islands are of prime interest to the international oil industry because of present exploration activities taking place in the province's vast territorial waters. Faroese oil consumption is of little significance from an international perspective because of its small population. Oil transport, distribution and marketing in the Faroe Islands are carried out by national and international companies of various sizes. The Faroe Islands have no oil-refining capacity.

Energy mix

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

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 electricity production was derived from oil, 35 per cent from hydro energy and 5 per cent from wind energy.

In 2019, Faroese oil consumption reached 286,382 tonnes, out of which fishing vessels, vehicles and aircraft were the top consumers. All Faroese oil consumption is met by foreign production.

Government policy

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 societal interests.

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 islands. The overall goal is to reduce greenhouse gas emissions by 20 per cent by 2020 compared with the level of emissions in 2005. Among other things, the policy sets goals for:

- decreasing heating-oil consumption by 50 per cent by 2020;
- a reduction of fuel consumption in the transport sector by 50 per cent by 2020; and
- 75 per cent of the overall electricity production shall be derived from renewable energy sources by 2020.

In September 2015, the Faroese government signed a coalition agreement stating that by 2030 all onshore electricity shall be generated from renewable sources. Despite that, it is stated in the agreement's annex that the government still aims to increase international interest in oil prospecting in Faroese waters.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

The Faroese Geological Survey is responsible for all administrative tasks relating to petroleum exploration and exploitation activities. It publishes general information about the existing licences for exploration and production of hydrocarbons and licensees.

The information is available for free through the Geological Survery's website at www.jf.fo. There is, however, no actual public register setting out oilfield ownership or operatorship, etc.

Legal system

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 are 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 were 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 gradual Faroese control of a number of policy areas.

The Faroese legal system is that of civil law based on legislation created and adopted by parliament. Domestic judgments can be enforced through the Faroese Enforcement Court. Since Regulation (EU) No. 1215/2012 (Brussels I) does not apply in the Faroe Islands, foreign judgments are not recognised nor are they 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 Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). If an arbitral award is recognised in the Faroe Islands, it can be enforced through the Faroese Enforcement Court.

The United Nations Convention against Corruption 2003 and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 do 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

Legal framework for oil regulation

6 | Describe the key laws and regulations that make up the principal legal framework regulating oil and gas 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 assume the rights to natural resources in the subsoil and bedrock in and around the Faroe Islands. From that point, it has been the Faroe Islands that, independent of Denmark, hold 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 commission's work resulted in passing the Preliminary Surveys Act of 21 October 1993. Four years later, the draft bill on the Hydrocarbon Activities Act was submitted to the Faroese parliament, passing as the Hydrocarbon Activities Act on 16 March 1998.

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 approving 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 an act of parliament. 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, third, and fourth rounds were passed by the Faroese parliament on 8 February 2000, 17 May 2004, 28 May 2008 and 28 February 2017, respectively. A bill for the parliamentary act governing the fifth licensing round was passed in 2019.

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 concessionaire is subject to 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 and drilling activities may only take place following a prior approval by the Faroese government (the Faroese Geological Survey) of equipment, the programme and mode of operation. The Executive Order on Health, Safety and the Environment of 8 March 2001 during the exploration phase of hydrocarbon activities contains further regulation of drilling activities. The Geological Survey monitors production and drilling activities.

To date, there is no oil production in the Faroe Islands. As such, no specific regulation regarding different production methods exists. However, section 23.1 in the Model Licence for the fifth licensing round stipulates that the licensee shall execute all operations in or in connection with the licensed area in a proper and workmanlike manner in accordance with methods and practice customarily used in good oilfield practice.

Expropriation of licensee interest

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

Where 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.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

According to section 40 of the Hydrocarbon Activities Act, a licence may be revoked in the following circumstances:

- in case of a serious or persistent breach of the provisions of the Act or of the provisions, terms and conditions or orders made in pursuance to the Act;
- where an application for a licence contains incorrect or misleading information; or
- where a licence files a petition for suspension of payments or for the opening of negotiations for a compulsory composition, is declared bankrupt, goes into liquidation or is in a situation that is comparable hereto.

Where the matter can be rectified by the licensee, the revocation of a licence in accordance with the abovementioned circumstances above may not take place until the Faroese government has issued an order specifying a time limit within which the matter shall be rectified and such order is not complied with. There are no provisions in the Hydrocarbon Activities Act or in the Model Licence for the fifth licensing round that regulate the possibility for the government to amend a licensee's interest.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

Government policy for the oil sector is exercised by the Minister of Trade and Industry through the Faroese Geological Survey.

The Geological Survey 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.

In the case of breach of the terms and provisions in the licence the Faroese government may under certain circumstances revoke a licence.

Government statistics

10 | 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 Geological Survey is also responsible for compiling the information about the subsoil in the course of activities comprised by the Hydrocarbon Activities Act.

NATURAL RESOURCES

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

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 land are involved.

Activities regarding minerals except 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.

The Hydrocarbon Activities Act and the Model Licence for the fifth licensing round contain no provisions regarding when title to extracted oil is transferred to the licensee, lessee or contractor. However, the Faroese government shall approve agreements where third parties becomes entitled to oil which, at the time the agreement is made, has

not been but may be extracted from the licensed area, unless the price for such oil is payable after it is extracted or the agreement provides that the oil shall be exchanged for other oil after it is extracted from the licensed area.

Exploration and production – general

12 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 2020, only offshore oil exploration activities had commenced. Oil production has not yet commenced.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

Government policy for the oil sector is exercised by the Minister of Trade and Industry through the Faroese Geological Survey.

The Faroese government grants licences with the exclusive right for, and the production of, hydrocarbons within a defined area and subject to specific terms and conditions that are laid out in the Model Licence. The terms and provisions in the Model Licence are non-negotiable.

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 comprising of the previous licensing rounds without prior application invitation. 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 20,000 Danish kroner in the fifth licensing 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 such 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 Danish kroner and, additionally, 10,000 Danish kroner is charged for the processing of each prospecting licence application. The application can be submitted by regular post 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 that 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 consider the extent to which Faroese society will gain insight into, and benefit from, the activities carried out by the applicant pursuant to a licence.

In the fifth licensing round, the award criteria included geological understanding and the extent of the work commitments that the applicant was willing to undertake to thoroughly investigate the prospects and to explore for hydrocarbons in the area to be covered by the licence.

Following a public notice inviting applications, the Faroese government may decide whether or 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.

Government participation

14 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. To date, the Faroese government has not and does not participate in any licences.

Royalties and tax stabilisation

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

The royalties are laid down in the Model Licences for the respective licensing rounds. In the Model Licence for the fifth licensing round the licensee shall pay a consideration each year for the grant of the licence. The fee is fixed at a progressive annual rate of 1,500 Danish kroner per square kilometre (years one to three) to 75,000 Danish kroner per square kilometre (year 12 onwards).

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.

Licence duration

16 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.

Extent of offshore regulation

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

The Hydrocarbon Activities Act applies to the prospecting, exploration, production and pipeline transportation of hydrocarbons on the land and territorial waters of the Faroe Islands and on its continental shelf.

In 1999, an agreement between the United Kingdom, Denmark and the Faroe Islands was concluded regarding the maritime delimitation boundary between the Faroe Islands and the United Kingdom.

In 2010, the governments of Denmark and the Faroe Islands, in accordance with the United Nations Convention on the Law of the Sea

1982, submitted information on the establishment of the outer limits of the continental shelf beyond 200 nautical miles regarding the Faroe Islands' southern continental shelf to the Commission on the Limits of the Continental Shelf. The final establishment of the outer limits will be agreed with adjacent coastal states.

Onshore offshore regimes

18 | 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. To date, only oil and gas exploration activities have been carried out.

Authorised E&P entities

19 | 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 contains no provision on which corporate entities may be granted a licence under the act. However, the Act does contain provisions requiring licence holders to have the requisite expertise, experience, resources and financial capacity to meet their obligations under a licence. Registration of subsidiaries and branches follows a relatively simple, swift and low-cost procedure.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

Neither the Hydrocarbon Activities Act nor the Model Licence contain specific provisions regarding the control of operatorship.

Joint ventures

21 | What is the legal regime for joint ventures?

Both individual companies and groups of companies may apply for licences. If companies participate in a joint venture, they will 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.

Reservoir unitisation

22 | 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.

It is left to the relevant licensees to negotiate the details of such a coordination agreement as far as possible.

Licensee liability

23 | 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 fifth licensing round contain no provisions on limitation of liability. If a licence is granted to a consortium, each member is jointly and severally liable.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

According to the Model Licence for the fifth 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

Minimum requirements

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

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 Faroe Islands' international airport at Vagar.

In the Model Licence for the fifth licensing round, the licensees are obliged 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.

Social programmes

26 | Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

The Model Licence for the fifth licensing round does not regulate any payment obligations to be made by a licensee, lessee or contractor to, for example, educational institutions or regional development programmes or similar social programmes. However, the licensee acknowledges and agrees to provide employment opportunities 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 research and development projects that may be undertaken in performance of the activities stipulated in the licence.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 | 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 Danish kroner for work related to administrating the Act. According to the Hydrocarbon Activities Act and the Model Licence for the fifth licensing round no pre-emptive rights are reserved for the government.

Approval to change operator

28 | 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.

Transfer fees

29 | 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 fifth licensing round contain no provisions on specific fees or taxes on a transfer or change of control.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

The Hydrocarbon Activities Act contains provisions regarding decommissioning upon discontinuance of production and the expiry of a licence, whereby the Faroe Islands are entitled to take over the installations if they can still be used for production or for other purposes. The Model Licence for the fifth licensing round does not contain any regulation on the transfer of title to facilities or equipment used for oil exploration, development or transportation activities.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 | 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.

Security deposits for decommissioning

32 | 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 fifth licensing round contains specific provisions regarding security deposits or specific amounts required. Deposits and conditions may vary case by case 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

Regulation

33 | 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 continental 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 Geological Survey and the Faroese Environmental Agency.

The Faroese Maritime Authority regulates marine vessels. The area is mainly regulated by the Faroese Merchant Shipping Act 1985.

In respect of road transport, the European Agreement concerning the International Carriage of Dangerous Goods by Road rules have not yet come into force in the Faroe Islands. The area of oil transportation by road is overseen by the Faroese Vehicle Inspectorate and the Faroese Fire Inspectorate, mainly in pursuance of the Fire Safety Act 1986 and other detailed orders and guidelines.

There is no rail transport 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 through Faroese ports or the Faroe Islands' international airport at Vagar.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

To date, oil exploration in the Faroe Islands has been conducted without production sharing contracts and no production activities have been carried out.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

According to the Hydrocarbon Activities Act, offshore installations, and onshore installations and facilities for the production of hydrocarbons, may only be established by a licensee following 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 installation;
- working environment;
- 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 the 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.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? 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:
  - noise reduction;
  - health provision; and
  - emergency medical response.

However, work executed aboard marine vessels must comply with the Faroese Employment Protection Act, which is administered by the Occupational Safety and Health Office.

With regard to using 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 fifth 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 their 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 are part of Denmark, Danish citizens may also work in the Faroe Islands without a work permit. The Faroe Islands are not a member of the European Union, so EU citizens must also obtain a work permit in accordance with the rules of the Aliens Act. Work permits are granted case by case.

A foreign national working in the Faroe Islands without the necessary work permit may face expulsion from the province. The foreign national and Faroese employer may also risk being fined.

In the Model Licence for the fifth licensing round, the licensees must agree to provide employment opportunities for Faroese inhabitants 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

Tax regimes

37 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 on company income from other activities 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;
- if the rate of return is between 25 per cent and 30 per cent, the special tax rate is levied at 25 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

Crude oil mining

38 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

Competition enforcers

39 What government bodies have the authority to prevent or punish anticompetitive 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.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

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 anticompetitive agreements.

Decisions regarding exemptions shall, furthermore, specify the period for which the exemption is effective, and may be granted on specific terms.

According to Part 9 of the Faroese Competition Act, the Competition Authority may impose daily or weekly fines in case a party infringes certain sections of the Act.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

The Hydrocarbon Activities Act and the Model Licence for the fifth licensing round contain no provisions regulating the ownership of seismic data or regulating whether the regulator can require the data owner to report or release the data.

INTERNATIONAL

Treaties

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

The Faroe Islands are not a member of the European Union and are not subject to EU legislation. The Faroe Islands are a member, in some cases through Denmark, of a number of international organisations.

The international continental 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 1982, 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 adjacent coastal states.

The Faroe Islands are covered by Denmark's membership of the World Trade Organization.

The New York Convention does not apply to the Faroe Islands. The Hydrocarbon Activities Act does not contain specific regulations on arbitration. The Model Licence for the fifth licensing round stipulates that any disputes or controversies arising out of or in connection with the licence or with the activities of the licensee pursuant to the licence shall be resolved under Faroese Law and shall be brought before a Faroese or a Danish court. The venue shall be Tórshavn. The minister and the licensee have the right to decide that a dispute shall be resolved by arbitration. Furthermore, If the disagreement concerns a development scheme, the licensee may refer the matter to arbitration. Such arbitration shall be by a single arbitrator whom the parties shall agree to nominate.

In February 2019, The Faroese Islands and the United Kingdom signed a free-trade agreement, which will ensure that trade between the countries will continue after the United Kingdom leaves the European Union.

Foreign ownership

43 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?

The Model Licence for the fourth licensing round stipulated that licensees that 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. However, the Model Licence for the fifth licensing round does not contain such a provision.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

No specific rules apply to cross-border sales or deliveries of crude oil or crude oil products, nor are there any volumetric supply obligations.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

The fifth licensing round opened on 11 July 2019 in conjunction with the 32nd UK licensing round. Both rounds closed on 12 November 2019. The Faroese government is open for out-of-round bids. The focus is on the areas south and east of the Faroe Islands.

The terms and conditions for licences awarded from an out-of-round bid are the same as those adopted by the Faroese parliament for the fifth licensing round.

In September 2019 the Unionist Party, the People's Party and the Centre Party agreed to form a coalition government. In the coalition agreement it is, among other things, stated that the government will seek further cooperation with neighbouring nations and territories throughout the North Atlantic. The government also intends to revise the tax system, including the value-added-tax system to make it more user- and industry-friendly. Furthermore, the government intends to implement intitatives to reduce emissions and pollution.

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GENERAL

Key commercial aspects

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

The upstream petroleum industry in Ghana was energised with the commercial discovery of oil in the Jubilee Field in 2007. The Jubilee Field straddles the Deepwater Tano and West Cape Three Points basins some 70km offshore of Ghana and 130km southwest of the port city of Takoradi. The field was estimated to have recoverable reserves of up to 1Bstb. As of June 2016, the Jubilee Field was estimated to have recoverable reserves of 455MMstb and 456Bscf.

Subsequently, further exploration led to the discovery of TEN Fields, Ghana's second major oil development, which was brought onstream and produced its first oil in August 2016. The field holds recoverable oil reserves of about 240MMstb, gas reserves of about 360MMscf, and is estimated to produce about 80,000Bbls/day at peak. The TEN project takes its name from the three offshore fields under development: Tweneboa, Enyenra and Ntomme, which are situated in the Deepwater Tano block, about 60km offshore of western Ghana. Drilling in the field was previously halted owing to a maritime dispute between Ghana and the Ivory Coast. The ruling delivered on the dispute by the International Tribunal of the Law of the Sea in September 2017, however, did not affect the field and drilling is, therefore, expected to commence in 2018.

In January 2015, Ghana took a major step towards the realisation of energy and power security with the signing of an agreement for the development of the Offshore Cape Three Points integrated oil and gas project, estimated to cost about US$7 billion, which is being undertaken by ENI Spa in collaboration with Vitol Energy. The project is expected to develop the Sankofa and Gye Nyame fields to provide sufficient gas to operate Ghana's thermal power plants for 20 years. Oil production from the field commenced in 2017 and the fields are expected to commence gas production in 2018. As of June 2016, the field was estimated to hold oil reserves of 204MMstb and gas reserves of 1,107Bscf.

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 relate 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 bulk storage, transportation and the retail 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 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 from the Jubilee Field and the Sankofa and Gye Nyame oilfields. It is estimated that 1,000scf of gas will be produced with each barrel of oil from the Jubilee Field alone. 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 100MMscf 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 to be more than 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 gas production will commence on the basis of the findings of the Gas Development Taskforce.

Energy mix

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

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, kerosene, LPG and natural gas for transportation and power generation.

Present consumption of petroleum products is in the region of 950,000 tonnes per year. 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, although there have recently been suggestions of nuclear power generation.

Government policy

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.

Also, Ghana has a national energy policy, which was formulated in February 2010. The national energy policy provides a concise outline of the government's policy direction in order to contribute to a better understanding of Ghana's energy policy framework. Among others, the national energy policy serves as a guide to key stakeholders and institutions in the energy sector highlighting the definition and implementation of key activities in respect of their mandates.

The national energy policy covers a broad spectrum of issues and challenges relating to the following areas:

- the power subsector;
- the petroleum subsector;
- the renewable energy subsector;
- waste to energy;
- energy efficiency and conservation;
- energy and the environment;
- energy and gender; and
- managing the sector's future.

In formulating the policies and laws regulating a specific subsector such as petroleum operations, due regard is 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 2016 (Act 919) (which repealed the Petroleum (Exploration and Production) Law 1984 (PNDCL 84)), the National Petroleum Authority Act 2005 (Act 691), the 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.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

Under the new Petroleum Exploration and Production Act, the Petroleum Commission, as part of its regulatory function, is required to establish and keep a register of all petroleum agreements, licences, permits and authorisations of the upstream oil companies it registers. Presently, the register is electronic and is available on the Petroleum Commission's website. Anyone may access the register at no fee.

The register is maintained by the Petroleum Commission and contains information on petroleum agreements signed by the Ghanaian government as well as the contract areas covered by each petroleum agreement. The register also contains information on who the operator of each contract area is, the other contracting parties, the interest held by the operator and each party in the contract area, and the current phase of operations, among others.

Legal system

5 | Describe the general legal system in your country.

Ghana operates a legal system based on the common law system. The 1992 Constitution of the Republic of Ghana has put in place stable democratic institutions 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 its 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. These cases have created the perception of interference by the government.

The people of Ghana also generally obey the country's laws and abide by court decisions. This was 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) (the 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. To be enforced, 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 Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) 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 anti-corruption legislation in force in Ghana consists of 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 combating 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 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). EOCO replaced the Serious Fraud Office and has additional powers to investigate and prosecute corruption cases. 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 on conviction for corruption under the Criminal and other Offences (Procedure) Act 1960 (Act 30) is a prison term not exceeding 25 years.

REGULATION OVERVIEW

Legal framework for oil regulation

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

Oil activities are regulated by a number of laws and regulations. The Energy Commission Act 1997 (Act 541) established 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), established 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 (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 (Local Content Regulations) passed in 2013 regulates local content in the upstream sector. The Petroleum Commission (Fees and Charges) Regulations, 2015 (LI 2221) regulates granting of permits and licence fees.

The Ghana National Petroleum Corporation Act 1983 (PNDCL 64), established the GNPC, which is responsible for the development, production and disposal of petroleum.

The Petroleum (Exploration and Production) Act 2016 (Act 919) is the primary legislation for the regulation of exploration, development and production of oil and gas resources in Ghana. The object of the law is to provide for and ensure safe, secure, sustainable and efficient petroleum activities in order to achieve optimal long-term petroleum resource exploitation and utilisation for the benefit of Ghanaians. The Petroleum (Exploration and Production) (Health Safety and Environment) Regulations 2017 (LI 2258) provides the basic health and safety requirements to be complied with by parties involved in the upstream industry.

The Petroleum (Exploration and Production) (General) Regulations 2018 (LI 2359) provides the necessary processes involved in the exploration, development and production of oil and gas resources.

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.

The Petroleum Revenue (Amendment) Act, passed in 2015, amends the Petroleum Revenue Management Act 2011, and provides for the allocation of funds to the Ghana Infrastructure Investment Fund for the purposes of infrastructure development, the provision of the composition of the Investment Advisory Committee and other related matters.

Expropriation of licensee interest

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 21(7) of the Petroleum (Exploration and Production) Act 2016 (Act 919) (the Petroleum Exploration Law), if an oil company does not make a 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 25 years.

However, where a discovery of petroleum is made in the last year of the exploration period, and an extension is necessary in order to enable a determination to be made on whether the discovery is a commercial discovery, or under exceptional situations, the Minister may, in consultation with the Petroleum Commission, extend the exploration period.

Under section 71(5) of the Petroleum Exploration Law, 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. The Minister may also compel the oil company to sell a percentage of its entitlement to the country to meets its domestic market requirements. However, any compulsory sale would be done at prevailing market prices.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

Generally, the licence would specify the conditions on which the government may revoke the licence. Further, the Minister of Energy, under the Petroleum Exploration law, has the power to postpone or suspend petroleum activities on a field, where the Minister believes such postponement or suspension is in the national or public interest.

On the occurrence of an accident or an emergency that leads to loss of life or personal injury, among others, the Minister may, acting on the advice of the Petroleum Commission, order that petroleum activities on the field be suspended to a certain extent or that the licensee may continue carrying out petroleum activities subject to the imposition of some conditions.

Also, where a natural resource is discovered in a contract area, the Minister may, acting in consultation with the relevant authorities and any affected person, order that petroleum activities in the area be postponed.

Regulators

9 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The Ministry of Energy provides the overall policy direction in the management of 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. The EPA ensures that the exploration and development of oil is undertaken in an environmentally friendly manner.

The GNPC is the state oil company and it is responsible for the development, production and disposal of petroleum. The GNPC is not a regulatory or oversight body and may undertake development, production and disposal of petroleum alone or in a joint venture with a private contractor.

The Petroleum Commission reports to the Ministry of Energy and 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.

Generally, breach of the legal requirements under the laws regulating the sector is criminal and the sanction for such a breach may only be imposed by a court of law after a person is convicted of the breach by the court. The sanctions that may be imposed by the court include fines and terms of imprisonment up to one year for each breach, or both. The Petroleum Commission also has the power to expunge the name of any person registered to conduct petroleum activities from the Petroleum Register, where the person fails to comply with local content requirements even after being notified by the Commission to remedy the breach. Also, the regulatory bodies have the power, in accordance with the law, to levy administrative fines for non-compliance with the law or the terms and conditions of a permit or licence.

Government statistics

10 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. Also, the Petroleum Commission, under the Petroleum Commission Act, has the duty to receive and store petroleum data, manage a national petroleum repository and, at the request of the Minister, undertake reconnaissance exploration including data acquisition.

This data is deemed the intellectual property of the Ghanaian government and the international oil company cannot deal with this data without government consent.

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

Title

11 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

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 3 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.

The issue of title to the extracted oil is determined on a contractual basis. In most petroleum agreements, the title and risks in the extracted oil pass to the licensee, lessee or contractor at the point where the extracted oil passes through the outlet flange or the delivery point.

Exploration and production – general

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

The Petroleum Exploration Law does not make a distinction between the licensing regime for undertaking either an offshore or onshore activity. Most of the petroleum activities are offshore and any person who intends to undertake a petroleum activity is required to enter into a petroleum agreement with the government. Under the Petroleum (Local Content and Local Participation) Regulations 2013 (the Local Content Law), indigenous Ghanaian companies are to be given first preference in the grant of a petroleum agreement or a licence with respect to petroleum exploration and production. Despite this provision, oil exploration and production are dominated by international oil companies.

Pursuant to the Local Content Law, contractors are required to source goods and services from Ghanaian companies unless the contractor can show that the quality of the Ghanaian goods required is lower than what is to be imported or that there is no Ghanaian company with the requisite technical skill.

Companies that are active in 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, Springfield and Anadarko. Also, Ghanaian

companies such as Seaweld Engineering and Belmet Ghana are active in the provision of support services in the exploration, development and production of oil.

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. TEN Fields, also in the Deepwater Tano block, has produced its first oil, and export of gas from the field is expected to begin in 2017. Also, the Sankofa Gye Nyame Field produced its first oil in 2018, which is expected to help in sustainable production of electricity in Ghana. The GNPC is also currently undertaking exploration activities in the Voltain Basin to enhance knowledge of the basin and establish its prospectivity.

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 can only be carried out in a particular area if the Minister for Petroleum so declares, and the 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.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

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 10 of the Petroleum Exploration Law provides that no person other than the GNPC shall engage in petroleum exploration, development and production except in accordance with the terms of a petroleum agreement between that person, the GNPC and the Republic of Ghana.

The Petroleum Exploration Law further provides that any person intending to engage in petroleum exploration and development shall participate in an open, transparent and public competitive bidding process initiated by the Minister for Petroleum. Direct negotiation will generally not be used in the first instance, unless that is the most efficient way of ensuring optimal exploration, development and production of the area. For instances of direct negotiation, the interested oil company must submit an application to the Minister for Petroleum.

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 subsector.

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 (MPA), has been developed to provide the framework for negotiating the terms and conditions of a petroleum agreement among the parties to a petroleum agreement. The parties to a petroleum agreement are free to negotiate any terms provided that such terms do not violate the law. The only mandatory terms under the Petroleum Exploration Law for a petroleum agreement are that, the agreement must provide that the GNPC shall hold an initial participating carried interest of at least 15 per cent for exploration and development and shall have the option to acquire an additional participating interest.

The parties are made up of the GNPC, the government and the oil company. In addition to the mandatory terms, the petroleum agreement will embody the final terms and conditions to regulate the intended petroleum operations. The typical terms of a petroleum agreement, as set out in 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.

Government participation

14 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 10 of Ghana's Petroleum Exploration Law, the government has a statutory right to participate in an exploration or production licence. Section 10 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 a carried interest of at least 15 per cent and the option to acquire additional participating interest in the discovery, depending on the terms of the petroleum agreement. This option to acquire additional right must, however,

be exercised within a particular time frame and is a paying interest, excepting costs incurred during exploration.

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.

Royalties and tax stabilisation

15 | If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are 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 and used by the GNPC, and was approved by government, has negotiable rates.

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.

Licence duration

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

Section 14 of the Petroleum Exploration Law provides, in the relevant part, that a petroleum agreement shall be valid for a total period not exceeding 25 years. The Petroleum Exploration Law permits the term of a petroleum agreement to be extended or a new petroleum agreement entered into by the parties, subject to ratification by parliament.

The law is also 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 and 15 per cent. The percentage of relinquishment is subject to negotiation.

Extent of offshore regulation

17 | 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.

Onshore offshore regimes

18 | 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.

Authorised E&P entities

19 | 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 carry 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 take 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.

Under the Petroleum Local Content Law, an investor who intends to enter into a petroleum agreement with the government or obtain a petroleum licence in order to explore, develop and produce oil and gas is required to incorporate a company in Ghana and grant an indigenous Ghanaian company at least 5 per cent equity participation. In practice, most investors register branch offices during the negotiation phase of the petroleum agreement and then incorporate the subsidiary companies before commencing petroleum operations in accordance with the law.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

The Minister of Energy's control over operatorship is usually restricted to the appointment of an operator before execution of the petroleum agreement or change of an operator after the petroleum agreement has been executed, as set out in the four steps below:

- the Minister may appoint an operator for parties to a petroleum agreement. The parties to a petroleum agreement are required to agree on an operator before the petroleum agreement is executed. However, the Minister may appoint an operator for the parties if the parties cannot agree on an operator;
- where the parties to a petroleum agreement select an operator, the operator must be approved by the Minister before execution of the petroleum agreement;
- after execution of the petroleum agreement, the parties to the agreement may only change the operator with the approval of the Minister; and
- the Minister, in consultation with the Petroleum Commission, may change an operator if the operator ceases to meet material requirements under the law or the petroleum agreement.

Joint ventures

21 | 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 (35.48 per cent), Kosmos Ghana HC (24.8 per cent), Anadarko WCTP Company (24.8 per cent), Petro SA (2.73 per cent), and the GNPC (13.64 per cent). The EO Group has since sold its 1.75 per cent stake to Tullow.

Also, the joint venture partners for TEN Fields are Tullow Ghana Limited (25 per cent), Kosmos Ghana HC (30.2 per cent), Anadarko (30.2 per cent), GNPC (12.5 per cent) and Petro SA (1.8 per cent).

Matters dealing with petroleum exploration and development are governed mainly by petroleum laws such as the Petroleum (Exploration and Production) Act 2016 (Act 919) 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.

At the moment, under the Petroleum (Local Content and Local Participation) Regulations, 2013 (LI 2204) (the Petroleum Local Content Law), all foreign companies who intend to provide goods or services in the upstream petroleum sector are required to incorporate a joint venture company with an indigenous Ghanaian company and afford that indigenous Ghanaian company at least 10 per cent equity participation. These joint ventures are required to register with the Petroleum Commission in order for them to legally engage in tenders or bids to provide goods or services to the contractors, licensees, subcontractors or the GNPC.

It is important to note that these joint ventures are different from the oil and gas exploration, development and production companies. These joint venture companies only provide goods and services to the oil and gas exploration, development and production companies who have entered into petroleum agreements with the government or hold petroleum licences.

Reservoir unitisation

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

Under the Petroleum Exploration Law, 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.

Licensee liability

23 | 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.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? 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 Minister of Energy. According to the law, a licensee is required to provide the Minister with the performance bonds or guarantees that the Minister may require for the fulfilment of the obligations undertaken by the licensee and for possible liabilities arising out of the petroleum activities undertaken under the licence, petroleum agreement or petroleum subcontract. The nature of the guarantee or performance bond is usually dependent on the requirements of the Minister. Usually, the Minister would require a guarantee from the ultimate parent company.

In relation to the environment, the Petroleum Exploration Law provides, in the relevant part, that a contractor is required, at cessation of operations, to restore the affected areas and remove all causes of damage or danger to the environment. Under the Petroleum Exploration Law, a licensee is required to set up a decommissioning fund for funding of its decommissioning plan. Under the Environmental Regulations, every contractor is required to provide a reclamation plan, which will be followed on decommissioning. In addition, the contractor is required to post a reclamation bond in the form of a security deposit with the EPA. In practice, the EPA and the contractor will negotiate the terms of the reclamation security agreement as well as the security deposit to be posted by the contractor.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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

The Petroleum (Local Content and Local Participation) Regulations 2013 (LI 2204) provide 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.

Also, companies that operate in the sector are required to give qualified Ghanaians first consideration with respect to employment in the company. The companies must also train the Ghanaians employed and ensure that Ghanaians who are employed in positions other than management and technical positions (such as engineers), constitute 80 per cent of its staff for such positions at the start of operations and 100 per cent of staff for such positions within 10 years of starting operations, among others.

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 200,000 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.

Social programmes

26 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

Under the old Petroleum Exploration Law, oil companies were encouraged to maintain a mutually beneficial relationship with the communities in which they conducted petroleum activities. The new Petroleum Exploration Law mandates the relevant regulatory bodies to play an active role in ensuring a mutually beneficial relationship.

Under the new Petroleum Exploration Law, legally binding obligations are placed on oil companies to have a positive impact on local communities by attaching sanctions to the obligations. Under section 64 of the Petroleum Exploration law, a local content fund is established and the funds are meant to be used for education and training for Ghanaian citizens as well as research and development of the Ghanaian petroleum industry. Also, the funds are required to be used to support small and medium-sized businesses in the industry by providing them with loans on a competitive basis. It is mandatory for contractors and subcontractors to contribute to the fund.

The model petroleum agreement also requires contractors to contribute towards the establishment of training programmes to equip Ghanaians with the requisite technical and management skills for efficiently carrying out petroleum operations. Generally, this will be a term of any petroleum agreement entered into by the GNPC and the state.

Section 27 of the Petroleum Exploration Law also requires contractors to submit a detailed plan of development detailing plans of the oil company with respect to meeting, among others, its local content and health, safety and environmental obligations under the Petroleum Exploration Law, the Petroleum (Local Content and Local Participation) Regulations and the Environmental Protection Agency Act. The plan of development must be approved by the Minister before the oil company can even commence operations.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 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 for Petroleum.

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 for Petroleum, 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 to the Sector Minister, who may or may not approve such a transfer.

Approval to change operator

28 Is government consent required for a change of operator?

Yes. Under section 13 of the Petroleum Exploration Law, the operator is appointed by the Minister and can only be changed with the approval of the Minister upon a request by the GNPC or a contractor. The approval of the Minister is not to be unreasonably withheld.

Transfer fees

29 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. The Minister may also impose conditions for assignment approval.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

Title to facilities and equipment used for oil exploration, development and transportation activities is initially vested in the contractor. However, in the course of the petroleum operations or by the end of

the operations, title is transferred to the GNPC. Under section 19 of the Petroleum Exploration Law, title to the facilities and equipment is transferred to the GNPC once the oil company recovers the cost of such equipment or when the petroleum agreement terminates.

The GNPC may also elect to acquire title before all the cost is recovered by the oil company but only after the oil company has recovered at least 50 per cent of the cost. Here, title will only be transferred to the GNPC after it pays the oil company the unrecovered cost of the equipment and facilities.

The right of the GNPC to acquire title to the facilities and equipment purchased by the oil company also exists or applies where the equipment and facilities were financed by a lease. However, the oil company is not required to transfer title in the facilities and equipment to the GNPC where the equipment and facilities are of a type which, by industry practice, are usually leased and are to be re-exported after use.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 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?

With respect to decommissioning, the oil company is required to set up a decommissioning fund and submit a decommissioning plan. Unless otherwise determined by the Minister, the decommissioning plan must be submitted not more than five years and not later than two years before the date on which the use of the petroleum facility to which the decommissioning plan relates is expected to permanently cease operation or the licence or the petroleum agreement to which the decommissioning plan relates will expire. The decommissioning plan must contain information and evaluations necessary for the Minister to make a decision relating to disposal of the petroleum facilities.

The Minister may approve the decommissioning plan and is required, upon approval, to set out a schedule for the implementation of the plan. Where the Minister disapproves the decommissioning plan, the Minister is required to notify the licensee or contractor in writing stating the reasons for the disapproval and request that certain conditions be satisfied by the contractor or licensee or a new or amended decommissioning plan be resubmitted to the Minister.

At a specified point in time of production, the oil company is required to contribute to the decommissioning fund and the funds are used to execute the approved decommissioning plan at the time indicated for decommissioning. The amount to be contributed to the fund will generally be calculated taking into consideration the cost of decommissioning, restoration of the site, and abandoning operations.

Under section 93 of the Petroleum Exploration Law, it is an offence to implement a plan of development without approval of the Minister and the offender will be liable, among others to pay US$1 million for each day the implementation was carried on and may be liable to a term of imprisonment if the oil company fails to comply with the fines imposed by the Minister.

Security deposits for decommissioning

32 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 Petroleum Exploration Law, a licensee, contractor or subcontractor is required to provide the Minister with performance bonds or guarantees as the Minister may require for the fulfilment of the obligations undertaken by the licensee, contractor or subcontractor and for possible liabilities arising out of the petroleum activities undertaken under the licence, petroleum agreement or petroleum subcontract.

TRANSPORTATION

Regulation

33 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 Limited (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 charged with maintaining Ghana's strategic stock of petroleum products.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

The Petroleum Exploration Law does not specify recoverable costs or a procedure for recovering any costs. However, under most production sharing contracts, the arrangement is for the contractor to recover operating costs (including development and production costs). These costs are determined in a budget that the operator presents to the joint management committee for approval.

Usually, the parties agree on how the costs are to be recovered. For instance, parties may agree for the contractor to pay upfront for the development costs. The contractor may then reimburse itself with an equivalent in crude oil liftings equivalent to the costs owed by the other parties. The formula for determining the value of the crude oil used to reimburse the contractor is determined by the agreement of the parties.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

The Petroleum (Exploration and Production) (Health Safety and Environment) Regulations 2017 (LI 2258) provide the basic health and safety requirements to be complied with by parties involved in the upstream industry. The purpose of these Regulations is:

- to prevent the adverse effect of petroleum activities on health, safety and the environment;
- to promote high standards for health, safety and the environment in carrying out a petroleum activity; and
- to contribute to the development and improvement of health safety and environmental standards.

The Petroleum Commission, 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 objective 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 situation is 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. Further, the EPA can revoke the environmental permit of a contractor to carry out petroleum activities or impose heavy fines over its breach of the environmental laws.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The Ghanaian labour market is governed by:

- the 1992 Constitution;
- the Labour Act 2003 (Act 651); and
- the Workmen's Compensation Act 1987 (PNDCL 187).

The various statutes regulating the oil industry also contain provisions dealing with labour issues.

In addition to the three above-mentioned regulations, the engagement of foreign labour is regulated by the Immigration Act 2000 (Act 573). Expatriate employees must possess valid visas endorsed with their names, before they may be permitted to enter Ghana.

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 Ghanaian government 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 the 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

Tax regimes

37 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 new Income Tax Act 2015 (Act 896). They provide 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 Income Tax 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 Income Tax Act.

At present, all companies engaged in petroleum operations are subject to a corporate income tax of 35 per cent on their chargeable income.

COMMODITY PRICE CONTROLS

Crude oil mining

38 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?

Originally, the NPA had the mandate to set the prices for the sale of petroleum products in accordance with the prevailing international market rates. Currently, price-setting of crude oil products is under a price deregulation regime where the oil importers and dealers fix their own prices. The NPA still maintains an oversight responsibility over the prices of crude and refined products but does not interfere in how the prices are fixed by the oil importers.

COMPETITION

Competition enforcers

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

The present legal regime has made no express provisions for the regulation of anticompetitive 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 anticompetitive 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 NPA's board 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 NPA's board 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.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

At present, there is no laid-down process for procuring a government determination for violation of competition laws. Where the proposed allegedly anticompetitive action is with regard to obligations under a petroleum agreement, any party that is likely to be affected by the proposed action may employ the dispute resolution mechanism set out under the petroleum agreement.

In addition, under the Protection Against Unfair Competition Act 2000 (Act 589), there are no penalties imposed for acts or practices of unfair competition. A person who believes an act or practice or a false or unjustifiable allegation during industrial or commercial activities, is likely to cause confusion, damage the person's goodwill or reputation, or mislead the public, may institute an action in a Ghanaian court for relief. The reliefs that a court may grant for acts or practices of unfair competition include an order of injunction to prevent the act or further acts, a provisional order to prevent unlawful acts or to preserve any relevant evidence and an award of damages as compensation. The court may also give any remedy which it considers fit on the facts of the case before it.

Note that the remedies granted in actions for unfair competition are civil and independent of the form of relief a victim of act of unfair competition may seek with regard to the infringement of intellectual property rights under:

- the Trade Marks Act 2004 (Act 664);
- the Copyright Act 2005 (Act 690); and
- the Patent Act 2003 (Act 657).

Generally, it is a crime to infringe on the intellectual property rights of another, and a person who is convicted of such infringement may be liable to a fine or a term of imprisonment of up to three years.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

All data collected and information obtained by a licensee, a contractor or subcontractor and the GNPC during petroleum activities, is the property of Ghana. This includes geological, geophysical, technical, financial and economic reports, studies, interpretation and analyses prepared by or on behalf of the licensee, contractor, subcontractor or the GNPC. The data and information may not be disclosed to a third party or exported outside Ghana without the prior approval of Petroleum Commission.

Persons who collect such data or hold such information are, however, permitted to use the data or information during the term of the licence or the petroleum agreement. The Petroleum Commission may also permit such persons to market the right to use the data or information subject to terms agreed between the Petroleum Commission and the relevant person.

INTERNATIONAL

Treaties

42 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 a signatory to several conventions on climate change, biodiversity, land degradation and other environmental issues, including the Kyoto Protocol 1997.

Ghana is also a signatory to the United Nations Framework Convention for Climate Change 1992. 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 must be conducted in conformity with these international obligations.

Also, section 59 of the Alternative Dispute Resolution Act 2010 (Act 798) (the ADR Act) recognises foreign arbitral wards and a foreign arbitral award is enforceable so far as it is valid, regular and still subsisting. Also, there should be no appeal pending with respect to the award under the law applicable to the arbitration. The ADR Act recognises the enforcement mechanism under the New York Convention.

Foreign ownership

43 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?

Any foreign company intending to carry out petroleum operations in Ghana is required to incorporate an entity under the Companies Act 2019 (Act 992).

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.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

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.

Under the Petroleum Exploration Law, the oil company may be required by the Minister of Energy to sell a portion of its crude oil product to Ghana to meet the country's domestic supply needs. Also, in the case of war or emergency affecting energy supply, the law empowers the Minister to compel the oil company to sell all or part of its crude oil entitlement to Ghana. Any such sale by the oil company is required to be at the prevailing market price.

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UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

As part of measures to support oil companies operating in Ghana in the wake of the covid-19 outbreak, the government is considering extending the period of oil exploration for companies engaged in exploration.

The government of Ghana is working on transforming the existing gas master plan into a gas law to regulate the industry. The new law is aimed at providing an enabling environment for investors as well as assisting the government to implement new technologies for the gas sector.

Greenland

Johan Weihe, Per Hemmer and Rania Kassis
Bech-Bruun

GENERAL

Key commercial aspects

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 km2, of which the Greenland ice sheet covers 1.8 million km2. Greenland's northernmost extremity is Cape Morris Jessup, which is also the northernmost land area in the world, situated less than 730km from the North Pole. In March 2020, Greenland had a population of 56,745.

Greenland is an autonomous part of Denmark (the Community of the Realm), which comprises Denmark proper, Greenland and the Faroe Islands.

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 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-governing 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 Mineral Resources Act are based on, and correspond to, the provisions on such licences in the formerly applicable 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 offshore areas of West Greenland. Comprehensive seismic surveys were carried out, and almost 21,000 kilometres' worth 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.

In 1997, the Geological Survey of Denmark and Greenland (GEUS) began to reinvestigate the well data and found that they suggested a hydrocarbon discovery in the Kângamiut-1 well.

A licensing round for offshore areas of West Greenland was held from 1992 to 1993. Because no applications were submitted, an open-door licensing policy was introduced in 1994 that 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 (Nunaoil), a company then owned jointly by Greenland's home rule authorities and the Danish state, and now owned by the Government of Greenland. 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, which covered offshore areas in West Greenland and around Cape Farewell, the southernmost extent of Greenland. On 1 January 2010, this 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 covered offshore areas of 151,358km2 off West Greenland. The areas are three times the area of Denmark proper. The areas were divided into 14 blocks of between 8,000km2 and 15,000km2. 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 to 2013 covered offshore areas of 50,000km2 off 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 30,000km2 designated by the Greenland government in the ordinary round area of 50,000km2. 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 consortia in four blocks in the Greenland Sea, based on applications from the 2012 to 2013 Licensing Round.

In 2014, licensing rounds were held regarding Jameson Land and south-west Greenland. In 2015, two exclusive onshore exploration and exploitation licences were granted on Jameson Land, covering an area of more than 4,200km2. No licensing rounds were held in 2015.

In 2014, the government published its Oil and Mineral Strategy for 2014-18. In accordance with the strategy, a licensing round for the onshore areas of Disko Island and Nuussuaq Peninsula, West Greenland, was held in 2016. In 2016, the government announced a new open-door procedure for the onshore areas on Disko Island and in Nuussuaq Peninsula in West Greenland. The open-door procedure was carried out during 2017–2018 with the application deadline of 31 December 2018. Applicants would be granted exclusive licences for exploration and exploitation of hydrocarbons for the offered areas under the procedure. Since February 2019, no further news about the open-door procedure has been published.

Furthermore, a licensing round for offshore areas in Baffin Bay was held in 2017. Since March 2020, information about any applications regarding the area in Baffin Bay remains to be published. In late 2018, a licensing round for offshore areas in Davis Strait was carried out. The application deadline was 15 December 2018. Since March 2020, no information on the licensing round has been published. The Davis Strait licensing area covers almost 90,000km2 and parts of this area were previously up for bidding during the 2004 and 2006 licensing rounds. Currently, eight offshore wells have been drilled in the area.

So far, the exploration activities have led to no licensee initiating 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.

As of March 2020, there are four exploration and exploitation licences for hydrocarbons.

Participants in the exploration and exploitation licences are:

- Greenland Gas and Oil A/S and Nunaoil (three licences)
- Panoceanic Energy Limited and Nunaoil (one licence)

There are also seven prospecting licences. Participants in the prospecting licences are:

- EMGS ASA (one licence)
- CASP (one licence)
- GX Technology Corporation (GXT) (one licence)
- TGS-Nopex Geophysical Company ASA (three licences)
- Petroleum Geo-Services (one licence)

International oil companies from Europe, the United States and Canada have 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 (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 31.4 billion barrels of oil equivalent of oil, gas and natural gas liquids. Until now, it has been too expensive and troublesome to exploit the oil in Greenland due to environmental conditions. However, the government has now decided to attract foreign and domestic oil companies to explore and exploit especially the northeastern parts of Greenland by decreasing the total government royalty on new licences.

Energy mix

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

In 2016, Greenland consumed 8,556 terajoules (TJ) of energy. Approximately 17.9 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. The numbers had not been officially updated as of March 2020.

From 2015-16, the consumption of petroleum-based fuels, such as petrol, diesel and other fuel oils, increased by approximately 0.3 per cent from 7,048TJ to 7,066TJ. This means that approximately 82.5 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.

Government policy

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 mineral resources. As a result, there are now four governmental authorities responsible for mineral administration, with the Ministry of Mineral Resources and the underlying MLSA being responsible for 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 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;
- social sustainability; and
- appropriate best international practices under similar conditions.

The government and the MLSA are responsible for the 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.

In 2014, the government published its Oil and Mineral Strategy for 2014–2018. The strategy included a licensing round for the offshore areas in the Davis Strait, which was held in 2018. In the beginning of 2020, the government published a new Oil and Mineral strategy for the years 2020–2024. The strategy aims towards increasing oil exploration and exploitation activities in order to make Greenland an oil-producing country.

In order to achieve the ultimate goal of an increase in oil production over the coming years, the Greenland government plans to decrease the government take and offer new licences, especially around western Greenland (the Nuussuaq Pennisula, Disko West, Baffin Bay and Davis Strait). Moreover, it is estimated that the northeastern parts of Greenland potentially have around 31.4 billion barrels of oil in the ground, and therefore the government plans a licence round in July 2021. The central parts of northeastern Greenland are currently under evaluation, to be finished by January 2022 and followed by a new licensing round for exploration licences.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

There is no official licence register in Greenland. However, the MLSA publishes a list of licences and licensees on their applications portal, which is available to the public without cost. The list is updated twice a month, except for July and August. The list of mineral and petroleum licences in Greenland is prepared by the MLSA on the first and 16th day 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.

Legal system

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 parliament and is also influenced by court practice. Under Greenland law, private property of land and resources is generally not recognised because of 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. Regulation (EU) No. 1215/2012 (Brussels I) 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 Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). If an arbitral award is recognised in Greenland, it can be enforced through the Greenland Enforcement Court.

The United Nations Convention against Corruption 2003 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 directly or indirectly, accept gifts or other benefits that 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

Legal framework for oil regulation

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

Oil activities are governed by the Mineral Resources Act, licences and the joint operating agreements (JOAs) between the oil operating parties. The Greenland Regulatory Regime for Oil Activities, including, in particular, the Mineral Resources Act, covers Greenland's land, territorial sea and continental shelf areas.

Oil exploration and exploitation activities may be conducted both onshore and offshore. Some minor areas in Greenland are off limits for oil activities because of 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 Large-Scale 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. The act stipulates a requirement for an environmental impact assessment and lays down minimum requirements with respect to foreign labour in large-scale projects.

Other main parts of the regulation concerning prospecting, exploration and exploitation of natural gas are set out in the government's licence terms. Model documents are published on the website of the Mineral Licence and Safety Authority (MLSA) in connection with each licensing round. Currently, the following Model Licences are available:

- standard terms for prospecting licences:
  - hydrocarbons (March 2009);
- Model Licence for Exploration and Exploitation of Hydrocarbons:
  - open-door areas onshore of Disko Island Nuussuaq (February 2020)
  - open-door offshore Baffin Bay (2020)
  - open-door for the Davis Strait (2020)
  - open-door for Disko Island West (2020)
  - Northeast Greenland (2021)
  - Central East Greenland (2022)

Companies that are co-licensees – members of a licence group – must make and use a JOA, which is subject to the approval of the MLSA. The Greenland government has issued a model JOA in connection with each area, which generally must be used with only minor amendments.

The standard terms for prospecting licences, the model exploration and exploitation licences and the model JOA 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 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 general 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.

In the beginning of 2020, the Greenland government published a new oil strategy for 2020--2024, in which the government revealed plans to modernise the current legislation, making the Mineral Resources Act into a Subsoil Act. The focus will be on simplifying the rules and licensing procedures without reduce the quality of the environment, safety and health. The government also plans to go into dialogue with the market regarding cost levels.

Expropriation of licensee interest

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, 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.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

According to the Mineral Resources Act and the 2020 Disko Nuussuaq Model Licence, the Mineral Licence and Safety Authority (MLSA) may, under certain circumstances, revoke a licence. A licence may for instance be revoked in the following cases:

- if a licensee fails to fulfil the set-out exploration commitments;
- if a licensee otherwise breaches the terms of the licence or the provisions laid down pursuant to the Mineral Resources Act;
- if a licensee fraudulently misrepresents facts to the MLSA;
- if the operator is not qualified to be the operator for the activities performed under the licence or does not meet the conditions, terms and requirements and approval as operator; or
- if one or more of the licensees suspend their payments, request the opening of negotiations for a compulsory composition, are declared bankrupt, go into liquidation or are in a similar situation.

However, the licence shall not be revoked if the above-mentioned factors are due to force majeure or if the breach is remedied by the licensee within a reasonably time limit set by the MLSA.

Furthermore, if a licensee is declared bankrupt, goes into liquidation or is in a similar situation, the MLSA will be prepared to approve the transfer of the relevant party's interest to one or more of the other parties holding shares in the licence, provided that the licensee continues to have the necessary expertise and financial resources for the activities performed and to be performed under the licence.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The Greenland 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 Mineral Licence and Safety Authority (MLSA) under the government.

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 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 government is generally responsible for all legal and administrative matters, governed by the Mineral Resources Act, concerning:

- prospecting;
- exploration and exploitation of gas;
- subsoil storage of gas; and
- establishment and operation of gas pipelines for gas transportation.

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 MLSA and placed with the Environment Agency for Mineral Resources.

The MLSA is a one-stop shop, however, and obtains the necessary approvals of, for instance, environmental impact assessment reports from the Environment Agency for Mineral Resources.

Administrative and regulatory decisions of the Mineral Licence and Safety Authority may be appealed to the Greenland Minister of Mineral Resources.

Administrative and regulatory decisions of the Minister of 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.

In the case of breach of the terms and provisions in the licence the MLSA may under certain circumstances revoke a licence.

Government statistics

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

The Mineral Licence and Safety Authority (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 statistical records on oil import and energy consumption. Greenland Statistics is an independent institution falling under the Greenland Minister for Finance.

NATURAL RESOURCES

Title

11 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

As part of its self-government, established by 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.

Exploration and production – general

12 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.

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 km2 of the 2.2 million km2 total land area.

Some small areas in Greenland are off limits to oil activities for environmental or military reasons.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

Prospecting, exploration and exploitation of oil may only be carried out under licences granted by the Greenland government.

Applications are submitted to the government through the Mineral Licence and Safety Authority (MLSA). The MLSA has issued a number of forms to be filled in by the applicant. The terms and provisions in the Model Licence are not negotiable.

Government participation

14 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-owned company Nunaoil was a mandatory participant in any hydrocarbon exploration and exploitation licence. Nunaoil's share of a licence was set out in the individual licence and was 6.25 per cent in the previous Model Licences. However, according to the new oil strategy for 2020–2024, the government participation through Nunaoil will be removed for the future licences, together with the decreased royalty payments, decreasing the total government take on a licence.

The current 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 participates in the licence on equal footing with the other parties. Nunaoil has no special right to participate in the operatorship of a licence, while neither being precluded from it.

Royalties and tax stabilisation

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

As a part of the adaptation of the Greenland oil strategy 2002–2024 the Greenland government wishes to increase the oil activities in the country, and has therefore, as a part of the strategy, chosen to adjust the previous percentages paid to the government, decreasing the government take from 51.3 per cent to 40.3 per cent. This has been done by removing the sales royalty entirely and decreasing the surplus royalty from 7.5 per cent, 17.7 per cent and 30 per cent to 3.75 per cent, 8.75 per cent and 15 per cent. The surplus royalty is a payment of an amount equal to a specific share of the licensee's profit from the activities under the licence. Comprehensive provisions on calculation and payment of the surplus royalty are set out in the licences and their appendices containing accounting principles. The specific rate is set according to the calculated profit in three tiers. Initially, the changes in the government royalty will apply to the new licences in the western and northeastern parts of Greenland.

The licensee is obliged to pay an application fee to the Mineral Licence and Safety Authority for the issuance of both a prospecting license and exploration licence. The licensee shall further pay a granting fee for the exploration licence (36,300 Danish kroner for each year). In addition, there is an annual licence fee from year 6 and forward of 41,500 Danish kroner to 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 the current 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.

Licence duration

16 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 generally last for 10 years but may last up to 16 years if justified by special circumstances. An exploration licence period may be extended by periods lasting 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 generally last for 30 years but may be extended up to 50 years if justified by special circumstances.

Extent of offshore regulation

17 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.

Onshore offshore regimes

18 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.

Authorised E&P entities

19 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 general 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 through 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).

Regulatory powers over operators

20 What controls does the regulatory body have over operators? Can operatorship be revoked?

According to the model joint operating agreement provided by the Mineral Licence and Safety Authority (MLSA), the operator can be removed from operatorship by the MLSA, if the operator is no longer qualified to be the operator under the licence, or if the operator does not meet the conditions, terms and requirements for the qualification and approval as operator in accordance with the Model Licence. Operatorship can also be revoked by the MLSA if the operator suspends its payments, requests the opening of negotiations for a compulsory composition, is declared bankrupt, goes into liquidation or are in a similar situation.

Joint ventures

21 What is the legal regime for joint ventures?

Companies that are co-licensees – members of a licence group – must enter into a joint operating agreement (JOA) that is subject to the approval of the Mineral Licence and Safety Authority (MLSA). The Greenland government has issued a model JOA that generally must be used with only minor amendments. The model JOA is available on the MLSA's website. The formation and organisation of joint ventures is not governed by any statutory regulation under Greenland law.

Reservoir unitisation

22 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 Mineral Licence and Safety Authority. If a coordination agreement cannot be reached within a reasonable time, the Greenland government may stipulate the terms of coordination.

If a hydrocarbon deposit covers areas situated in Greenland and another state, the government may, if an agreement is made with the other state on coordination of exploration and exploitation, order the licensee for the Greenland part of the deposit to participate in the agreement and stipulate the terms.

Where resource, economic or social considerations mean (justify) that two or more hydrocarbon deposits should be exploited together, the government may issue an order to this effect following negotiations with the licensees. Under an order, a licensee may be ordered, against payment, to make processing and transport facilities available for coordination. In the event of lack of agreement between the licensees on payment, the government determines the amount.

Licensee liability

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

Liability is regulated in the joint operating agreement (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 Greenland 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 share.

Guarantees and security deposits

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

In accordance with common practice, the Mineral Licence and Safety Authority (MLSA) requires 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 made a 'model guarantee' form available on its

website to be used for licences issued in the 2017 (Baffin Bay) and 2018 (Davis Strait) licensing rounds.

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 because of obligations for which a company is jointly and severally liable with the other licence co-holders, the guaranteed 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

Minimum requirements

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

According to the Mineral Resources Act, the extent to which the licensee must use Greenland labour, services and supplies can be regulated in a licence.

Section 21 of the 2020 Model Licence for Disko Island 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 if Greenland enterprises are not technically or commercially competitive.

Social programmes

26 | Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

In the same context as an environmental impact assessment, activities covered by the Mineral Resources Act may be subject to a social impact assessment, if the activity is assumed to have significant impact on social conditions in Greenland. If that is the case, the activities cannot commence before a social impact assessment report has been approved by the Ministry of Industry, Labour and Trade on behalf of the Greenland government, ensuring that the project is socially sustainable for Greenlandic society.

The main objectives of the social impact assessment are, inter alia, to inform and involve relevant and affected individuals, stakeholders and communities in the project process, to identify both positive and negative social impacts at local and national levels, to optimise the positive impacts and to mitigate the negative impacts. The social impact assessment report description of positive and negative impacts of the proposed activities must include descriptions of employment opportunities, social balance and cultural values. The report should also include details on the measures that are planned to mitigate any negative impact.

In extension of the social impact assessment report, the licensee must enter into an impact benefit agreement with the relevant municipality or municipalities and the government. The impact benefit agreement is meant as a tool for converting the initiatives described in the social impact assessment report to more specific and measurable initiatives.

The contents of the impact benefit agreement are subject to negotiation. However, certain topics should be expected to generally be included, such as terms for recruiting Greenlandic labour, creating apprenticeships and providing training and education opportunities and engaging Greenland enterprises and local suppliers.

The impact benefit agreement must as a general rule be signed by all parties before other plans relevant for the projects are approved. As part of the impact benefit agreement licensees may further commit to fund social programmes, etc. For instance, in 2011, 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.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 | 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 joint operating agreement (JOA) of the Greenland government must approve any direct or indirect transfer of a licence or part therein. The Mineral Licence and Safety Authority (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.

The government has no direct preemptive rights. However, 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. Therefore, as Nunaoil is a mandatory participant in all licences, the government indirectly holds pre-emptive rights with regard to the transfer of licences.

Approval to change operator

28 | Is government consent required for a change of operator?

Change of operator is usually regulated in the joint operating agreement (JOA). The JOA stipulates that the selection of a new operator is subject to the consent of the Mineral Licence and Safety Authority.

Transfer fees

29 | 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 Greenland 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 2020 is 12,500 Danish kroner and the granting fee for the transfer of an exploration licence is 20,800 Danish kroner.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

Generally, the licensee holds title to facilities and equipment used for oil exploration, production and extraction pursuant to the licence.

Following termination of an exploration licence or an exploitation licence, the licensee shall keep all data, drill cores and other samples acquired by the licensee or on its behalf in respect of the licence area for a period of at least one year. Before the destruction or disposal of the data, drill cores and other samples, they shall be offered to the Mineral Licence and Safety Authority (MLSA) free of charge.

Pursuant to the 2020 Disko Nuussuaq Model Licence prior to the start-up of abandonment activities, the licensee is entitled to sell or otherwise transfer the buildings, facilities, installations, etc established for the activities performed under the licence to any other parties, including Greenland or Danish authorities. However, a transfer is not currently a requirement at any point, including when the licence is terminated.

The establishing of pipeline facilities for transportation of, for example, hydrocarbons from an offshore installation requires a separate licence. Pursuant to the Mineral Resources Act, it may be stipulated in the licence that title to the pipeline facilities is transferred to the Greenland government when the licence is terminated. No Model Licence for pipeline facilities is currently available from the MLSA.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 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 2020 Disko Nuussuaq 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 Mineral Licence and Safety Authority.

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 government may lay down terms to ensure fulfilment of the licensee's obligations in relation to decommissioning, including provision of security.

Security deposits for decommissioning

32 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 2020 Disko Nuussuaq Model Licence requires the licensee to draft an abandonment plan to be submitted for the approval of the Mineral Licence and Safety Authority (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

Regulation

33 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 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 transport and traffic in Greenland are regulated by the Greenland Road Traffic Act.

There is generally no road transport or rail transport between towns in Greenland because of 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 fjords, and most oil and oil products are transported by ship.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Oil exploration and production activities in Greenland are not conducted under production sharing contracts.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

The Mineral Resources Act sets out requirements 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 under similar conditions.

Environmental impact assessments must be made and reports 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 Mineral Licence and Safety Authority.

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, in charge of or supervising the performance of an activity subject to the Act. In practice this may, for instance, be the operator. If the 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 and severally liable and responsible and also the 'responsible party' or 'party responsible' under the rules on environmental liability and responsibility.

Pursuant to the Act, the party responsible for imminent danger of environmental damage must immediately initiate necessary preventive measures that can avert the imminent danger of environmental damage and notify the 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 to it.

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.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The government's usual labour standards generally apply to oil industry labour as well.

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. That Act regulates issues such as working periods, rest periods and 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 labour from Greenland shall be employed when personnel are hired. This is in accordance with a general Greenland Act on Employment, which gives preference to labour from Greenland.

The Mineral Resources Act also states that to a necessary extent, the licensee may employ personnel from other countries if labour with corresponding qualifications does not exist or is not available in Greenland.

Hydrocarbon licences generally contain the said statements on employment of Greenland labour.

As part of the 2011 impact benefit agreement for drilling activities off offshore Greenland, Cairn Energy donated US$500,000 to an education fund that promotes education among Greenlanders aimed at helping 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 labour. Only citizens of Denmark, Finland, Iceland, Norway and Sweden are not required to obtain a work permit.

In 2012, the Greenland parliament 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 a minimum wage, working hours and collective agreements. Employers are allowed to deduct the cost of room and board as well as travelling expenses from a foreign worker's wages.

TAXATION

Tax regimes

37 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. No tax stabilisation measures apply to licensees under the Mineral Resources Act, and licensees are generally not protected against future increases in the Greenland corporate tax rate.

The Greenland Tax Authority is responsible for collecting taxes and fees, except those governed by the Mineral Resources Act.

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. However, in the coming licensing rounds this will not be the case, as the government plans to decrease the government royalty to attract more, especially foreign, oil companies to participate in the licensing rounds.

COMMODITY PRICE CONTROLS

Crude oil mining

38 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 violate the general Competition Regulation in Greenland.

COMPETITION

Competition enforcers

39 What government bodies have the authority to prevent or punish anticompetitive 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. 1 of 15 May 2014 (and its executive orders) on Competition (Competition Act).

The current Competition Act repealed the previous 2007 Competition Act and was revised to include a regulation on the clearance of mergers. The merging parties must inform the Competition Authority when a merger has taken place. Following notification, 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.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

Section 6 of the Competition Act provides that undertakings must not make agreements that restrict competition and that such agreements, 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 anticompetitive. The parties to an agreement that wish to procure government 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 anticompetitive 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.

In accordance with section 37 of the Competition Act, daily fines can be imposed on a party that does not comply with the rulings of the Greenland Competition Council. Furthermore, regular fines can be imposed in accordance with section 38 of the Act.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

According to the 2020 Licence for Disko Island licensing round, the Mineral Licence and Safety Authority (MLSA) may require that the licensee submits all data including geological, geochemical, geophysical, technical, environmental, health, financial data, that are carried out in respect of the licence area. This data shall be submitted to the MLSA on request.

The party that collects the seismic data also holds title to this. However, if the data is collected by the operator during joint operations, the operator must provide each party with copies of all seismic data as each party may reasonably request in accordance with the model joint operating agreement.

INTERNATIONAL

Treaties

42 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.

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. If an arbitral award is recognised in Greenland it can be enforced through the Greenland Enforcement Court.

Foreign ownership

43 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?

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 general rule, be a public limited company domiciled in Greenland.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

There are no specific rules that apply to cross-border sales or deliveries of crude oil or crude oil products. The terms and conditions are generally subject to the terms of the agreement between the parties and Greenland general contract law.

There are no volumetric supply obligations for the local market that prevail over the export rights of the oil producer.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

The Davis Strait licensing round, which covers offshore areas situated west of Greenland, was carried out in late 2018.

Since March 2020, no information about any granted licences in accordance with the Davis Strait licensing round has been published.

Greenland's government published a new oil and gas strategy in the beginning of 2020 for the years 2020-2024. As a general objective, the government wishes to increase the oil activities in Greenland over the coming years. To this end, there are plans for several licensing rounds, especially focusing on the areas around western and north-eastern Greenland. The application is already open for some of the areas on the government's website: businessingreenland.gl

To achieve this goal, the government has decreased the government royalty in future licences, which means that the entities granted a licence will have a bigger share of the revenue from the exploration and exploitation. Moreover, as a part of the new strategy, the government will revise the legislative regime turning the Mineral Resources Act into a Subsoil Act. The main focus will be on simplifying the application process and the granting process without compromising the current environmental, health and safety requirements.

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GENERAL

Key commercial aspects

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

India has a total of 26 sedimentary basins spread over 3.14 million square kilometres (onshore and offshore). Crude oil and natural gas production in the country is from seven basins covering an area of 532,500 square kilometres and deep-water areas. So far, 225 hydrocarbon discoveries constituting 109 natural gas and 116 crude oil discoveries have been made.

4.5 billion barrels of oil reserves had been proved at the end of 2018. India produced approximately 39.5 Mmt of oil in 2018. India processed 245.3 Mmt of the crude oil in 2016–2017, and its refining capacity stood at 249.4 million tonnes on 1 May 2019. India's crude oil production in October 2019 stood at 2738.44 thousand metric tonnes.

Energy mix

2 | What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

Approximately 35 per cent of India's energy needs are covered directly or indirectly by oil and gas. Coal supplies approximately 58 per cent of energy while the balance of 7 per cent is supplied through nuclear and other non-conventional sources.

India's production of petroleum products exceeds domestic demand. In the fiscal year (up to November 2019) export of petroleum products in India was 43.56 Mmt. During the fiscal year 2018, the production of petroleum products was 243.58Mmt according to publicly available information. India, however, still imports petroleum products. India is expected to be one of the largest contributors to non-OECD petroleum consumption growth globally. Oil imports rose sharply to US$87.37 billion in 2017-18 from US$70.72 billion in 2016–2017. In 2018–2019, total crude oil imports were valued at US$111.96 billion.

Government policy

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

In 2017, government think tank NITI Aayog came out with a draft National Energy Policy, a broad-scale policy covering India's entire energy system. It is an omnibus policy for achieving energy security through coordination between various sources of energy. The key objectives of the energy policy are (i) access to affordable prices, (ii) improved security and independence, (iii) greater sustainability and (iv) economic growth. The policy further intends to provide clarity to energy-sector stakeholders and help lay down the foundation for India to match the energy consumption parameters of developed nations.

In January 2020, the International Energy Agency reviewed and appraised the 2017 Draft Energy Policy of India and recommended its immediate adoption.

In 2000, the government laid down a 25-year policy for the hydrocarbon sector known as 'Hydrocarbons Vision 2025'. Its key features were to:

- assure energy security by achieving self-reliance;
- enhance the quality of life by progressively improving product standards to ensure a cleaner and greener India;
- develop the hydrocarbon sector as a globally competitive industry through upgrade of technology and capacity building.

From time to time, the Ministry of Petroleum and Natural Gas issues policies and guidelines for exploration and production activities, natural gas, refining and marketing.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

There is no official or publicly available register for licences or licensees. However, the required information is available on the Ministry of Petroleum and Natural Gas's and the Director General of Hydrocarbons' websites.

Legal system

5 | Describe the general legal system in your country.

India follows the common law system, and its 1950 Constitution contains the basic law of the land. The rule of law prevails, and the judiciary is known to uphold the law in cases of enforcement of contractual and property rights.

The procedure for enforcement and execution of decrees, whether foreign or domestic, is governed by the Code of Civil Procedure 1908 (CPC) and for enforcement of arbitral awards is primarily governed by the Arbitration and Conciliation Act 1996 as well as the CPC. Domestic and foreign awards are enforced in the same manner as a decree of the Indian court. However, parties may encounter delay in enforcement of foreign awards or decrees on account of the functioning of the court system.

Laws governing the anti-bribery regime in India include:

- the Prevention of Corruption Act 1988 (PCA), which is the principal anti-corruption law that penalises public servants for offences related to acceptance or attempted acceptance of any form of illegal gratification. Under this Act, any individual involved in abetting the offence committed by a public servant, may also be prosecuted;

- the Indian Penal Code 1860 contains provisions covering bribery and fraud matters, including those committed in the private sector;
- the Prevention of Money Laundering Act 2002 provides for the prevention of money laundering and use of those proceeds in India;
- the Foreign Contribution (Regulation) Act 2010 regulates the acceptance and use of foreign contributions and hospitality by corporate entities and individuals;
- the Whistleblowers' Protection Act 2011 provides a mechanism to protect anyone who exposes alleged wrongdoing in government bodies, projects and offices, and to investigate alleged corruption and misuse of power by public servants;
- the Companies Act 2013 also contains certain provisions to prevent corruption and fraud in the corporate sector;
- the Lokpal and Lokayuktas Act 2013 establishes the offices of the nodal ombudsman for the central and state governments, to facilitate and investigate cases of corruption in the public sector;
- the Corporate Anti-Bribery Code 2017 issued by the Institute of Company Secretaries of India, which may be voluntarily adopted by companies to prevent bribery in private sector;
- the Central Civil Services (Conduct) Rules 1964 and All India Services (Conduct) Rules 1968 prohibit government officials from receiving any gifts, transport or other monetary advantages without the sanction of the government; and
- the Central Vigilance Commission Act 2013 has established the Central Vigilance Commission, which enquires into offences alleged to have been committed under the PCA.

REGULATION OVERVIEW

Legal framework for oil regulation

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

Parliament is vested with exclusive powers under the Constitution to make laws in respect of 'Regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable'.

The legal and regulatory framework with respect to oil and gas is as follows:

Regulatory framework

The Petroleum and Natural Gas Regulatory Board (PNGRB)

The PNGRB, established in 2006 under the Petroleum and Natural Gas Regulatory Board Act 2006, is empowered to regulate:

- refining;
- processing;
- storage;
- transportation;
- distribution;
- marketing;
- sale of petroleum and petroleum products and natural gas; and
- fair trade and competition among oil and gas companies.

The Directorate General of Hydrocarbons (DGH)

The DGH, under the administrative control of the MoPNG, is responsible for regulating oil and gas industry activities concerning:

- the environment;
- safety;
- technology; and
- the economy.

The Oil Industry Development Board (OIDB)

The OIDB, established under the Oil Industry (Development) Act 1974, is mandated to help establish facilities for:

- crude oil production, handling, storage and transport;
- petroleum and petroleum product refining and marketing;
- fertiliser and petrochemical manufacturing and marketing;
- scientific, technological and economic research useful to the oil industry;
- experimental or pilot studies in any oil industry field;
- training personnel, within India or outside, engaged or to be engaged in, any oil industry field; and
- such other measures as may be prescribed.

Policy framework

The New Exploration Licensing Policy (NELP)

NELP was formulated by the Indian government and the DGH as the nodal agency in 1997–1998 to provide a level playing field to both public- and private-sector companies in exploration and production of hydrocarbons.

On 14 October 2015, the MoPNG notified the Discovered Small Field Policy in respect of identified discovered small fields or unmonetised discoveries.

Marginal field policy

The marginal field policy provides for the discovered small fields of Oil and Natural Gas Corporation Ltd and Oil India Ltd, which could not be monetised for years. Bids are based on a revenue-sharing contract (RSC) model.

On 10 March 2016, the Hydrocarbon Exploration and Licensing Policy (HELP) replaced NELP; the key aspects are:

- a single licence for exploration and production of all forms of hydrocarbons;
- an open-acreage licensing programme;
- a revenue-sharing model; and
- marketing and pricing freedom for produced crude oil and natural gas.

The laws and regulations governing oil and gas activities in India include:

- the Oilfields (Regulation and Development) Act 1948, which provides for regulation of oilfields and for the development of mineral oil resources. It provides for licensing and leasing of petroleum and gas blocks by the Indian government, and grants production exploration licences and mining leases, among other things;
- the Petroleum and Natural Gas Rules 1959, which provides for rules regulating the grant of exploration licences and mining leases in respect of petroleum and natural gas that belongs to the government, and for its conservation and development;
- the Petroleum Act 1934 and its rules, which provide for the regulation of import, transport, storage, production, refining and blending of petroleum; and
- the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976 and its rules, which provide for matters relating to resources (including land and minerals) within the territorial waters continental shelf, exclusive economic zone and other maritime zones of India.

Expropriation of licensee interest

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

Rule 21(3) of the Petroleum and Natural Gas Rules 1959 enables the relevant government to cancel any licence or lease if any part of land covered by the licence or lease is required for any public purpose. Any

cancellation is subject to restrictions and conditions as may be imposed by central government or state government, and the cancellation is required to be published in the Official Gazette and takes effect from the date of publication.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

The Petroleum and Natural Gas Rules 1959 (made under the Oilfields Regulation and Development Act, 1948) allow the relevant government to cancel the licence or lease, if the licensee or the lessee:

- fails to fulfil, or contravenes, any of the terms, covenants and conditions contained therein;
- fails to use the land covered by it in good faith for the purposes for which it has been granted; or
- uses such land for a purpose other than that for which it has been granted.

Cancellation occurs if the breach is not remedied within the specified period.

The relevant government may cancel either wholly or in part upon the written request of the licensee or lessee or, where there are two or more of them, of not less than one-half of their number.

The Petroleum Rules 2002 (made under the Petroleum Act 1934) allow the licensing authority or the central government to suspend or revoke the licence, if:

- the licensee ceases to have right to the site for storing petroleum;
- a no-objection certificate has been cancelled;
- the licensee contravenes any of the following:
  - the Petroleum Act 1934;
  - rules made therein;
  - conditions prescribed in the licence;
  - order of the central government.

The above is the case, provided that the licensee shall be given an opportunity of being heard and the period of suspension shall not be more than three months.

The authority may not give an opportunity of being heard to the licensee if the suspension is due to the violation of the terms of licence that is likely to cause an imminent danger to the public.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The Directorate General of Hydrocarbons is the lead regulatory authority under the Ministry of Petroleum and Natural Gas (MoPNG) for the upstream sector. The role and functions of the DGH include:

- to act as a nodal agency for implementation of policies on behalf of the MoPNG;
- to advise the MoPNG on exploration strategies and production policies;
- to provide technical advice to the MoPNG on issues relevant to the exploration and optimal exploitation of hydrocarbons in India;
- to review the exploration programmes of companies operating under petroleum exploration licences granted under the Oilfields (Regulation and Development) Act 1948; and
- to assist the government in contract-management functions.

The MoPNG represents the government in public sector undertakings in the oil and gas sector. The MoPNG is responsible for administration of various legislation and government orders including the Petroleum Act 1934 and the rules made under it and the Oilfields (Regulation and Development) Act 1948.

The Petroleum and Natural Gas Regulatory Board (PNGRB) is a statutory body formed under The Petroleum and Natural Gas Regulatory Board Act 2006. The PNGRB is entrusted with functions including:

- to protect the interest of consumers;
- to register entities involved in specified areas falling under midstream or downstream sector;
- to grant authorisations for specified midstream or downstream infrastructure; and
- to regulate, by regulations:
  - access to common carrier or contract carrier;
  - transportation rates for common carrier or contract carrier; and
  - access to a city or local natural gas distribution network.

The PNGRB has jurisdiction to adjudicate upon and decide any dispute or matter arising among relevant entities and receive any complaint from any person and conduct any inquiry and investigation in relation to specified matters.

A sanction for breach emanates from the contract and the various pieces of legislation.

The penalty for violating the provisions in the PNGRB Act 2006 is mostly in the form of monetary fine and, in some cases, imprisonment.

Government statistics

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

The economics and statistics division of the MoPNG, together with the Petroleum Planning and Analysis Cell, maintains oil production, export and import statistics.

NATURAL RESOURCES

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

As held by the *Supreme Court in Threesiamma Jacob and Others v Geologist, Department of Mining and Geology and Others* ((2013) 7 SCR 863), there is nothing in the law that declares that all mineral wealth subsoil rights vest in the state; the ownership of subsoil or mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by a valid process of law.

Under article 297 of the Constitution:

- all lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union;
- all other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union; and
- the limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or under any law made by parliament.

Exploration and production – general

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

Both onshore and offshore oil exploration activities are undertaken in India. Some areas may be off limits due to defence requirements or other reasons like existence of national parks and will not come under bidding for exploration. Moreover, no drilling is allowed (except with special permissions of the central government) within minimum distances (prescribed by the central government) of any pipelines, railways, dwellings, industrial plants, aircraft runways, buildings used for military or public purposes or within 3 kilometres of any mine.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

The rights to explore and produce are granted by the Ministry of Petroleum and Natural Gas through international competitive bidding and pursuant to the policies of the government. The government executes a revenue-sharing contract (RSC) with the successful bidder. RSCs are not open for any significant negotiations.

The successful bidder is required to submit an application for a licence or a mining lease to the relevant government in accordance with the Petroleum and Natural Gas Rules 1959. A fee of 100,000 Indian rupees for a licence and 200,000 Indian rupees for a lease is to be paid to the relevant government along with the application. There are no timelines prescribed for grant of a licence or lease. The amount of fees provided here is subject to change.

Every licence or lease shall contain terms and conditions prescribed by applicable rules and such additional conditions as may be provided in the agreement between the government and the licensee or lessee.

Government participation

14 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?

A state oil company does have a right to participate in a licence. There is no mandatory participation through state oil companies or any carried interest of the government. Statutory mandate is with respect to participating interest.

The revenue-sharing contract model also provides for the determination of the government's share of revenue. Under this model of operation, the government receives a share of the gross revenue from the sale of oil, gas, etc, from the first day of production. Bidders are required to quote revenue share in their bids. They are required to quote a different share at two levels of revenue called 'lower revenue point' and 'higher revenue point'.

Royalties and tax stabilisation

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

Royalties are paid to central government (in the case of offshore blocks) and to the state government (in the case of onshore blocks) at rates specified in the respective RSCs. Royalty rates shall be in accordance with the current model RSC under the Discovered Small Fields Policy:

- onshore area – 12.5 per cent of the value of crude oil and condensates and 10 per cent of the value of natural gas produced and saved in the contract area;
- offshore area – 10 per cent of the value of crude oil, condensates and natural gas produced and saved in the contract area; and
- offshore area beyond 400-metre isobath – 5 per cent of the value of crude oil, condensates and natural gas produced and saved for the first seven years and 10 per cent of the value of crude oil, condensates and natural gas produced and saved after the first seven years.

Under the Hydrocarbon Exploration and Licensing Policy (HELP):

- onshore area – 12.5 per cent for oil and 10 per cent for gas and coal-bed methane (CBM);
- shallow water – 7.5 per cent for oil, gas and CBM;
- deep water – no royalty for the first seven years. After seven years – 5 per cent for oil, gas and CBM; and
- ultra-deep water – no royalty for the first seven years. After seven years – 2 per cent for oil, gas and CBM.

MoPNG Resolution dated 28 February 2019 prescribed concessional royalty rates if production is commenced within four years for onshore and shallow water blocks, and five years for deepwater and ultra-deepwater blocks from the effective date of contract.

The government's share of revenue shall be paid (in addition to the royalties) at rates specified in the RSCs. There are no tax stabilisation measures in India.

Licence duration

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

A licence is valid for four years and extendable for two further periods of one year each. The term of a mining lease is ordinarily 20 years and the area for a mining lease is 250 square kilometres. The central government may, by way of public interest and by notification, relax the condition regarding the area and term.

Under the model RSC issued under HELP, an exploration period of eight years has been provided for onshore (including coal bed methane) and shallow water blocks, and a period of 10 years for frontier, deepwater and ultra-deepwater areas. The exploration period is divided into two phases. The period can be extended up to six months. Extension for a period more than six months is subject to written approval from the government (acting through the Directorate General of Hydrocarbons).

Extent of offshore regulation

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

The sovereignty of India extends to the territorial waters of India (up to 12 nautical miles from the nearest point of the appropriate baseline), seabed and subsoil underlying and the airspace over the waters.

The contiguous zone of India is an area beyond and adjacent to the territorial waters and the limit of the contiguous zone is the line every point of which is at a distance of 24 nautical miles from the nearest point of the baseline.

The continental shelf of India comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of 200 nautical miles from the baseline where the outer edge of the continental margin does not extend up to that distance.

The exclusive economic zone of India is an area beyond and adjacent to the territorial waters and the limit of such zone is 200 nautical miles from the baseline.

The central government, may by notification make provisions with respect to exploration, exploitation and protection of the resources in the continental shelf, and the exclusive economic zone. With respect to the exclusive economic zone, the central government may by notification also make provisions for other activities for the economic exploitation and exploration of such designated area such as the production of energy from tides, winds and currents.

The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act 1976 prohibits any person including a foreign government from:

- exploring or exploiting any resources of the exclusive economic zone;
- carrying out any search or excavation or conducting any research within the exclusive economic zones; or
- drill therein or construct, maintain or operate any artificial island, offshore terminal, installation or other structure or device therein for any purpose whatsoever in an exclusive economic zone except in agreement with the central government or in accordance with the terms of a licence of letter of authority issued by the central government.

Onshore offshore regimes

18 | 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 certain differences in the onshore and offshore regimes under the Petroleum and Natural Gas Rules 1959 and model RSCs such as the time period for exploration licences, rates of royalty payable to the government and insurance.

The policies, acts, rules and regulations are common for both onshore, and offshore regimes. HELP provides for a single, uniform licence to enable exploration and production operators to explore and extract all hydrocarbon resources which are regulated by the Oilfields Regulation and Development Act 1948 and the rules made under it.

Authorised E&P entities

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

All entities, Indian or foreign, may undertake exploration and production activities in India, subject to foreign exchange laws. Filing requirements would apply to all domestic companies and foreign companies under companies' legislation.

An approval process applies to a person who is not a resident and wishes to set up a company, branch office or project in India. A time frame of around four weeks may be estimated for the registration process. The conservation cost estimate is around US$2,500. The entities are selected through international competitive bidding and pursuant to the policies of the government.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

The operators under the respective revenue sharing agreements are governed by the terms and conditions of the licence or mining lease granted under the Oilfields (Regulation and Development) Act 1948 and the terms and conditions stated in the respective revenue-sharing contracts (RSCs), or joint operating agreement, if any.

The RSC under HELP does not envisage a situation where operatorship may be revoked. However, no change in operator may be undertaken without the approval of the government.

Joint ventures

21 | What is the legal regime for joint ventures?

Joint ventures are a matter of commercial arrangement and there is no specific statute governing them. Incorporated joint ventures would be required to follow the domestic laws as applicable to any company in India.

Normally, unincorporated joint ventures are formed for participation in the upstream sector.

Reservoir unitisation

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

Reservoir unitisation is envisaged in the revenue-sharing contracts. However, there are no policies in India that deal with cross-border reservoirs.

Licensee liability

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

In accordance with the model revenue-sharing contract (RSC) under HELP, the liability of the members comprising the contractor is both joint and several. The liability of each of the members is limited to the extent of their individual participating interests and the liability of the contractor shall be limited to any liability undertaken by or on behalf of the contractor, in respect of the contract, or in relation or connection to the contract. Further, if the contractor fails to complete the committed work programme, it shall be liable to pay to the government liquidated damages as specified under the RSC.

Joint liability and limitation of liability flows to the extent provided under contract law.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

Under the revenue-sharing contracts, there is a requirement for a parental bank guarantee, by a parent company that is acceptable to the government. In addition, each member of the contractor, or the operator on behalf of the contractor, in respect of work commitments, is required to furnish a bank guarantee in favour of the government.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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

The revenue-sharing contract requires the contractor and operator to employ to the maximum extent possible citizens of India, taking into account the experience required in the level and nature of the petroleum operations. Further, there is a requirement for the operator to offer opportunity for on-the-job training and practical experience in petroleum operations during exploration to a mutually agreed number of Indian nationals.

In addition to these, the contractor may give preference to the purchase and use of goods manufactured, produced or supplied in India and employ Indian subcontractors.

There is no specific penalty provided for the breach of these terms.

Social programmes

26 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

While there are no specific social programme payment obligations under petroleum legislation, the provisions of corporate social responsibility under the companies' legislation shall be applicable to both domestic and foreign companies.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 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 Petroleum and Natural Gas Rules provide that the licensee or the lessee shall not transfer its right, title or interest in a licence or a lease, without the written consent of the relevant government.

In case of assignment of participating interest by the contractor, prior written consent of the government shall be required. Similarly, in case of any change in the status of a contractor or its shareholding resulting in a change in control of the contractor, it shall seek prior written consent of the government.

The central government, in case of a national emergency, has the right of pre-emption for the refined petroleum or petroleum products, crude oil or natural gas.

Approval to change operator

28 Is government consent required for a change of operator?

Consent of the government is required for a change of operator.

Transfer fees

29 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 on transfer or change of control. Treatment of assignments is determined on the basis of general taxation principles.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

In accordance with the revenue-sharing contract, all assets purchased by the contractor for use in the petroleum operations shall be owned by the parties comprising the contractor in proportion to their participating interest; however, the government shall have the right to require the contractor to vest full title and ownership in the assets (fixed or movable), free of any encumbrance to the government upon expiry or early termination of the contract.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 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?

Specific regulations for abandonment and decommissioning of oil and gas facilities and pipelines are not in place. The Ministry of Petroleum and Natural Gas is expected to formulate legislation in this regard as mentioned under the Site Restoration and Abandonment Guidelines for Petroleum Operations, April 2017.

The revenue-sharing contract provides for compliance with Good International Petroleum Industry Practices 2016, which contain provisions in respect of abandonment and decommissioning. The Petroleum and Natural Gas (Safety in Offshore Operations) Rules, set forth safety provisions for abandonment and decommissioning in respect of offshore facilities.

Security deposits for decommissioning

32 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 security deposits are required in respect of future decommissioning liabilities.

TRANSPORTATION

Regulation

33 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 primarily governed by the Petroleum Act 1934 and the rules made under it; and the Petroleum and Natural Gas Regulatory Board Act 2006 (PNGRB Act 2006) and the rules made under it.

There are various government bodies regulating the transportation of crude oil, such as:

- the Petroleum and Natural Gas Regulatory Board (PNGRB), transportation by pipeline in accordance with various regulations made under the PNGRB Act 2006,
- the Petroleum and Explosives Safety Organisation, which regulates transportation by land and water in accordance with the Petroleum Act 1934 and rules made under it.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

The contractor shall be entitled to recover 100 per cent of development cost, exploration cost, production cost and royalty from the total value of petroleum produced.

All costs until the first year of production are aggregated and are recoverable. If the revenue in a particular year is not sufficient for

recovery, the costs will be carried forward for recovery in the subsequent year.

The maximum amount of cost petroleum to which the contractor shall be entitled (to be taken from the accepted bid) is based on a percentage of the total value of the petroleum produced and saved from the contract area.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

The various pieces of legislation applicable to an upstream oil-related facility operation, onshore and offshore, include:

- the Water (Prevention and Control of Pollution) Act 1974;
- the Air (Prevention and Control of Pollution) Act 1981;
- the Environment (Protection) Act 1986;
- the Public Liability Insurance Act 1991; and
- the National Environment Tribunal Act 1995.

The provision of Mines Act 1952, along with the safety standards published by the Oil Industry Safety Directorate, is applicable to all oil-related facility operations.

The Directorate General of Mines Safety is the regulatory agency for occupational safety, health and welfare of persons employed in mines (including oil mines).

Depending on the nature of offence, the legislation listed above provides for penalties ranging from nominal fines to rigorous imprisonment.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The revenue-sharing contract requires the contractor and operator to employ Indian citizens to the maximum extent possible, taking into account the experience required in the level and nature of the petroleum operations.

Foreign nationals are eligible for an employment visa subject to fulfilment of conditions as mentioned on the Ministry of External Affairs, Government of India website.

While India lacks a comprehensive anti-discrimination law, there are central pieces of legislation that endeavour to cover specific aspects such as:

- the Protection of Civil Rights Act 1955;
- the Equal Remuneration Act 1976;
- the Rights of Persons with Disabilities Act 2016;
- the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013; and
- the Maternity Benefits Act 1961.

The above-mentioned Acts contain penal provisions including fines and imprisonment.

TAXATION

Tax regimes

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

The direct-tax provisions are covered in the Income Tax Act 1961, which includes provisions for:

- the minimum alternative tax;
- deductibles (exploration development costs, expenditure on research and development, site restoration expenses);
- capital allowances (accelerated depreciation and allowance for investment in new plant and machinery);
- incentives (tax holiday, carry forward losses);
- withholding tax;
- tax on transactions (farm-in and farm-out, selling shares); and
- transfer pricing.

Indirect taxes are set forth in multiple statutes and include:

- customs duty (basic customs duty, additional customs duty, special additional customs duty, excess);
- excise duty; and
- goods and services tax.

There are regulatory authorities established under the relevant legislation.

COMMODITY PRICE CONTROLS

Crude oil mining

38 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?

Oil marketing companies are allowed to set the price of all fuels, while two strategically important products for the economically under privileged – kerosene and LPG – remain regulated. However, government intervention in prices of petrol and diesel cannot be ruled out.

COMPETITION

Competition enforcers

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

The authority to prevent or punish anticompetitive practices vests with the Competition Commission of India (CCI). The CCI was established in accordance with the Competition Act 2002, which prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates combinations (acquisition, acquiring of control and mergers and acquisitions), which causes or is likely to cause an appreciable adverse effect on competition within India.

The sector-specific regulatory body is the Petroleum and Natural Gas Regulatory Board, which, in accordance with the Petroleum and Natural Gas Regulatory Board Act 2006, has the function to protect the interest of consumers by fostering fair trade and competition among the entities.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

There is no specific provision for procuring government determination that a proposed action will not violate any competition laws.

However, the Competition Commission of India (CCI) allows for an informal and verbal consultation prior to the filing of the notice of a proposed combination, and the parties intending to file for any action, are encouraged to approach the CCI for such consultation. Any request for pre-filing the consultation may be made at least 10 days prior to the proposed filing date.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

In accordance with the model revenue-sharing contract, the title of all data obtained as a result of petroleum operations shall vest with the government.

INTERNATIONAL

Treaties

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

India follows the dualist theory and, accordingly, domestic legislation is required for implementation of international law in India. The Constitution enables the government to enter into and implement international treaties and empowers parliament to make any law, for the whole or any part of the territory of India, for implementing 'any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body'.

India is a signatory to the United Nations Convention of the Law of the Sea 1982, which primarily intends to settle all issues regarding the right to ocean space and the law of the sea. India is a member of the World Trade Organization (WTO) and a party to various WTO agreements.

The Indian Arbitration and Conciliation Act 1996 provides for enforcement of foreign awards in India, passed under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the Geneva Convention 1949.

Foreign ownership

43 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?

All foreign entities may undertake exploration and production activities in India, subject to foreign exchange laws. An approval process applies to a person who is not a resident and wishes to set up company, branch office or project in India.

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Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

India does not have free trade with respect to the export of crude oil. Accordingly, there are no volumetric supply obligations in respect petroleum products. The cross-border sales generally take into account local market demand for petroleum products.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

Oil and gas companies are increasing investment to enhance production to keep up with the growing needs of the country. Moreover, public and private companies are looking for investments in non-conventional energy resources. 100 per cent foreign direct investment allowance by the government has created an investment-friendly environment for foreign entities.

Italy

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GENERAL

Key commercial aspects

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, which is why despite being 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.

In 2019, oil production was 4.268 Mmt, a decrease of about 9 per cent compared with the previous year, when oil production reached 4.673 Mmt. This was due, in part, to a slight decrease in national oil demand and, in part, to the fear of a suspension of production in several oilfields as laid down by Law No. 12 of 11 February 2019, which provided for a supension, with some exceptions, of new applications for production concessions for an extendable period of 18 months until the Minister of Economic Development and the Minister of Environment enact a Decree containing a plan (named "PiTESAI") containing a precise framework of the suitable areas for carrying out prospecting, exploration and production activities on national territory. According to Law No. 8 of 28 February 2020, the PiTESAI shall be adopted by the Ministers by 13 February 2021 at the latest.

Regarding consumption, a Ministry of Economic Development survey revealed that on December 2019 Italian oil consumption amounted to just over 5 Mmt, a decrease of 0.5 per cent compared with December 2018.

According to data released by the General Office for Energy and Mineral Resources of the Ministry of Economic Development, Italy has 1,597 producing wells.

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 developers and local authorities (the regions in particular) involved in the granting of permits and authorisations. In accordance with Law No. 239/2004, the administrative instruments, named 'single procedure' and 'conference of administrations', have been introduced in the licensing process to simplify and speed up such processes. Other encouraging developments promoting oil extraction are:

- incentives for developing secondary fields;
- incentives for geophysical studies; and
- draft regulation on decommissioning offshore facilities.

These government initiatives have led to a small but important increase in exploration and production activities in Italy.

Two important oilfields that will further support the oil-extracting industry are the Val d'Agri and Tempa Rossa concessions, which are both located in the same area. Val d'Agri is operated by ENI and co-owner Shell, and it is one of the key oilfields for the Italian oil industry with a production capacity of 100,000bbl/d, which covers 6 per cent of Italy's demand. After production interruption in 2016 following a preliminary investigation by the Italian Public Prosecutor, the oilfield boosted its production. However, in line with the general decrease, 2019 oil production at Val d'Agri was slightly lower than in 2018. Val d'Agri and Tempa Rossa oilfields provide a high-quality product, superior to Brent Crude benchmark standards. Approximately 87 per cent of domestic oil is extracted onshore, mostly from the Basilicata (69 per cent) and Sicilian (16 per cent) fields, in contrast to the rapidly depleting fields in Piedmont.

Energy mix

2 | What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

Approximately 67 per cent of Italy's energy needs are covered by traditional oil and gas supplies. Most of this is covered by imports (approximately 90 per cent). 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 nuclear accident in Fukushima, Japan, 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 nuclear reactors.

Among other relevant events concerning Italy's upstream sector, in 2011 the government signed a memorandum of understanding with the Basilicata region to double the production of crude oil at the Val d'Agri and Tempa Rossa fields. Planned increases in production from these two areas, totalling up to 180,000–190,000bbl/d, would represent 14 to 15 per cent of Italy's energy demand.

Government policy

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 high-demand growth, its dependence on energy imports (75.9 per cent of the overall domestic energy demand) and in general, the low efficiency of existing generating capacity and high fuel costs. Consequently,

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 finances. As a result, the Italian parliament has adopted a number of measures to reorganise the regulatory environment by adopting a more comprehensive reform of the entire energy sector, providing for a stricter timetable by which public authorities shall deal with applications to implement oil development projects (Law No. 239 of 23 August 2004).

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

The General Directorate for Mineral Resources and Energy of the Ministry of Economic Development (UNMIG) provides for constantly updated data on licences and licensees through its website (www.unmig.sviluppoeconomico.gov.it/unmig), its monthly Official Bulletin of Hydrocarbons and an annual report published 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. Therefore, there is no specific register setting out oilfield ownership or operatorship since this information is frequently published in the Official Bulletin of Hydrocarbons and updated on the UNMIG website.

Legal system

5 | Describe the general legal system in your country.

The Italian legal 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 parliament;
- law-decrees issued in special cases by the government and that must be submitted to 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 carry legal weight (eg, regulations usually adopted by administrative authorities, setting out, for instance, mandatory prices, incentives and tariffs for goods and services), while other regulations may not (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 primarily 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 debtor assets and subsequent forced liquidation and sale of those assets.

Bankruptcy (which is regulated in Royal Decree No. 267 of 16 March 1942, 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 1958 and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965. 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 if 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 i, which are especially relevant for the private sector, are as follows:

- 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 for 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;
- 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 another 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
- 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

Legal framework for oil regulation

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

Oil and gas activities are considered to be part of the mineral-extracting industry whose operation and title is regulated by statute. Over the past two decades, the statutory rules in these sectors have been significantly affected by EU 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 94/22/EC, banning the monopoly of the state-owned incumbent, ENI. Owing to 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.

Further, 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. According to Directive 2014/25/EC, which repeals and replaces Directive 2004/17/EC and article 35 of the Italian Code of Tenders, the present value thresholds, excluding VAT, are work contracts exceeding €5.225 million and service and supply contracts exceeding €418,000.

Expropriation of licensee interest

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 time frame 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 archaeological sites.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

Pursuant to article 5 of the Ministerial Decree of 7 December 2016, the Ministry of Economic Development may revoke the mining title if the holder of the mining title:

- does not act in compliance with the obligations provided for in the relevant administrative decree granting such mining title (for instance the titleholder is not in compliance with the work programme submitted and approved by the Ministry);
- is not in compliance with the provisions of the above-mentioned Ministerial Decree of 7 December 2016 or with the instructions of the Ministry or of the relevant section of the General Directorate for Mineral Resources and Energy of the Ministry of Economic Development;
- fails to request any mandatory authorisations to the Ministry; or
- does not pay any applicable fee, taxes and other expenditures as set forth in the administrative decree granting the mining title.

In the event of offshore activities, the Ministry, on the basis of the information collected from the Safe Sea Committee, evaluates the opportunity to revoke the concession if the public safety relating to the activities carried out is no longer guaranteed.

The decision to revoke the mining title is taken by decree of the Ministry, after consulting the Commission for Hydrocarbons and Mineral Resources and after consultations with the holder of the mining title.

If there is a revocation, the Ministry may either grant the mining title to another operator, after due implementation of a public tender or, in case the production of hydrocarbons is no longer considered economically advantageous, it may finally revoke the relevant mining title. In the latter case, the former holder of the title is appointed as custodian, free of charge, of the oilfield until this has been fully decommissioned.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The regulatory body for the oil industry is the Ministry of Economic Development, 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 General Office for Energy and Mineral Resources (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 UNMIG, which 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.

In the case of a breach, the Ministry may revoke the mining title.

Government statistics

10 | 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 General Directorate for Mineral Resources and Energy of the Ministry of Economic Development 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 General Office for Energy and Mineral Resources.

NATURAL RESOURCES

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

Whereas landowners are, as a general rule, free to develop the subsurface according to their own private and economic needs, 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 subsurface 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). As a result, title to extracted oil is transferred at the time the specific oil company is granted the public concession and has started oil production.

Exploration and production – general

12 | 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 on- and offshore. The share of onshore production remains consistently higher than that of offshore production. The Basilicata region is the most important area for oil extraction; Sicily ranks second.

As of 31 March 2020, Italy had 65 exploration permits and 384 production concessions in effect. These activities are mainly onshore.

Exploration and production activities are prohibited in natural parks and in certain maritime zones.

In 2010, following the Deepwater Horizon 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, through Legislative Decree No. 83/2012, with the aim to foster the oil sector, the government provided that the duration of the offshore exploration concessions within the above-mentioned 12 nautical miles – granted before 2013 – could continue.

Exploration and production – rights

13 | How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

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 surveys) 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 negligible, must be submitted along with a specific 'work programme' as well as relevant estimation costs and a 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 General Directorate for Mineral Resources and Energy of the Ministry of Economic Development, which will examine the 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. In any case, the terms and conditions of the mining title are not negotiable by operators; nevertheless, it is common practice that operators informally liaise with the Ministry in order to submit a suitable application in line with the Ministry's expectations.

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.

However, it must be pointed out that in 2014, to favour the exploitation of natural resources within the Italian national territory, foster investment in hydrocarbons and achieve the supply targets as outlined in the National Energy Strategy Plan, the Italian legislature introduced a significant reform in the oil and gas regulatory framework.

Article 38 of Sblocca Italia (Unlock Italy) Decree No. 133/2014, converted into Law No. 164/2014 of 11 November 2014, enabled the government to introduce the 'single mining title' for onshore oil exploration and production, in lieu of the exploration and concession titles. This decree specified that all the operators holding an exploration permit or with an application pending at the date of publication of the reform (11 November 2014) had 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 previous standard procedural regime (ie, exploration permit and subsequent production concession). According to the Sblocca Italia Decree, the new authorisation procedure had to be completed within 180 days of the date when the relevant operator had submitted its application. The Ministerial Decree of 25 March 2015, enabled the Ministry of Economic Development to implement the Sblocca Italia Decree, and clarified that the 'single mining title' gives successful applicants title to carry out exploration activities in a given area for a period of six years (which could be extended for two additional three-year periods) and, in the case of hydrocarbons' discovery, title to obtain a production concession for a period of 30 years (which can be extended for an additional 10-year period).

However, by Decisions No. 170/2017 and No. 198/2017, the Italian Constitutional Court stated that article 38 of the Sblocca Italia Decree is unconstitutional and repealed the Ministerial Decree of 25 March 2015, on the grounds that such decrees did not provide for a sufficient involvement of the regions in the process through which the Ministry for the Economic Development regulates the modalities for the granting of the single mining title.

In line with the above-mentioned decisions, the Ministry, by the Decree dated 9 August 2017, amended the Ministerial Decree of 7 December 2016 on the modalities for the granting and the exercise of the mining titles by deleting any reference to the granting and the exercise of the single mining title. A proper and adequate procedure for the granting of the single mining title is expected.

Government participation

14 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 stake in ENI, the most important Italian oil operator. The stake 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).

Royalties and tax stabilisation

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

When developing oil resources, a royalty in favour of the Italian state is due from operators. National Law No. 160 of 12 December 2019 updated the royalties for oil and gas. According to this Law, the current italian royalty rate for onshore production, both for gas and oil, is 10 per cent (7 per cent royalty rate plus 3 per cent to the social card and economic developing fund), while the royalties for offshore production amount to 10 per cent for gas (7 per cent royalty rate plus 3 per cent environment and safety share) and 7 per cent for oil (4 per cent royalty rate plus 3 per cent environment and safety share). These rates 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.

Licence duration

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

A prospecting permit has a duration of one year.

An 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.

A 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.

Extent of offshore regulation

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

Italy applies the criteria set in the Montego Bay Convention on the Law of the Sea 1982 and 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.

Onshore offshore regimes

18 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 Defence;
- the Ministry of Transport; and
- the Ministry of Agriculture.

Such a difference is also reflected in the environmental impact assessment sub-procedure.

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.

Authorised E&P entities

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

Any operator from in or outside the European Union 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 of 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 net assets 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).

According to the Directorial Decree dated 15 July 2015 (which shall be considered currently valid and effective, except for all references to the single mining title), the companies interested in prospecting, exploration and production activities have the opportunity to go through a pre-qualification process whereby the Ministry of Economic Development verifies the necessary requirements of the applicant before the presentation of the application. The positive outcome by the Ministry of Economic Development does not imply the automatic release of any relevant mining title.

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 new company are not noticeable and amount to approximately €6,000–€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 new company 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 titleholders of an exploration permit discover an oil reservoir during the exploration phase, they 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 economic 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 state the time necessary to carry out the development plan, the investments and further exploration activities, etc.

Single mining title

The Ministry will not release any further single mining title until a new regulation has been enacted.

Note that the granting of new permits and concessions to applicant companies is subject to the existence of all economic guarantees required by law in order to cover potential accidents during the process of prospecting, exploration and production. By a circular dated 9 May 2018 – in line with the provisions of Directorial Decree dated 15 July 2015 – the Ministry confirmed that minimum threshold amounts relating to such economic guarantees requires all applicants comply with them in order to adequately deal with, and react to, any potential accidents that may occur during their activities.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

The Ministry of Economic Development controls that operators act in compliance with obligations provided for in the administrative decree granting the relevant mining title or with the instructions, indicated from time to time, by the same Ministry or of the relevant section of the General Directorate for Mineral Resources and Energy of the Ministry of Economic Development. In the case of a breach, the mining title may be revoked.

Joint ventures

21 | 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.

Reservoir unitisation

22 | 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 General Directorate for Mineral Resources and Energy of the Ministry of Economic Development, which 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 an area 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.

Licensee liability

23 | 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.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

Companies with net assets 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) whose net assets are 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

Minimum requirements

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

There are no restrictions. Italian law does not provide for an obligation to use a minimum amount of locally sourced goods, services and capital.

Social programmes

26 | Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

According to Law No. 239/2004, local authorities (ie, regions and municipalities) are entitled to enter into specific agreements with the relevant licensee in order to implement compensatory measures. Such compensatory measures consist of the payment of an indemnity by the licensee in favour of the relevant local authorities, since the local authority could not make alternative use of the area covered by the licensee's activity.

The total amount of compensatory measures must not exceed 15 per cent of the royalties deriving from the relevant oil production.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 | 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 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.

Approval to change operator

28 | Is government consent required for a change of operator?

Yes. In case of a change of operator, the transfer has to be notified to the Ministry for approval.

Transfer fees

29 | 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 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.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

Not applicable.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 | 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 the Directorial Decree of 15 July 2015, 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.

The Ministry of Economic Development Decree dated 15 February 2019 has defined the new national guidelines for the mining decommissioning of offshore platforms and related infrastructure, whose main purposes are to ensure the environmental protection of the offshore area and a possible reuse of the platform for different aims. Moreover, according to the new guidelines, mining titeholders shall communicate by 31 March each year to the relevant section of the General Directorate for Mineral Resources and Energy of the Ministry of Economic Development the list of platforms whose wells have been authorised for closure and which they do not intend to use further for mining activities, stating the period during which the mining closure activities will be carried out and attaching a descriptive technical report related to the decommissioning works.

Security deposits for decommissioning

32 | 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 net assets lower than €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 a 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

Regulation

33 | 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.

COST RECOVERY

Determining recoverable costs

34 | Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

As a general rule, expenses are deductible for corporate income tax purposes as long as they are inherent to the business activity of the company and to the extent that they are registered in the accounts on an accrual basis (eg, entertainment expenses are deductible pursuant to specific rules).

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 | What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

In addition to the standard employers' obligations to safeguard the safety and health of workers in the workplace, 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 General Directorate for Mineral Resources and Energy of the Ministry of Economic Development (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 General Office for Energy and Mineral Resources, together with the local offices of 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 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.

Nevertheless, 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.

In order to increase offshore operations in the hydrocarbons sector, Legislative Decree No. 145/2015, implementing Directive 2013/30/EU, lays down the safety requirements that every company needs to meet for operating in an offshore oil facility. Among other things, companies must put in place the necessary mechanisms to avoid any risk relating to upstream activities in the sea and in the event of serious accidents, operators shall take all suitable measures to limit their consequences for human health and the environment. To verify the correct execution of the Law, an ad hoc committee composed of several experts from the hydrocarbons sector has been set up. In March 2020, this committee issued the Guidelines on Inspections, Investigations and Enforcement Measures aimed at verifying if mining providers are in compliance with the measures set forth by Legislative Decree No. 145/2015.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Worker selection must be based on their professional qualifications, experience and training. There is no minimum amount of local labour that must be employed.

As regards foreign labour, there are no restrictions on workers from the European Union, although they still need to apply for a residence permit.

The employment of a non-EU worker requires compliance with the following main steps:

- release of the work permit in favour of the non-EU worker by the competent division of the Ministry of Labour upon application by the employer;
- transfer of the work permit from the division of the Ministry of Labour to the Italian consular representation in the state where the non-EU worker is resident;
- release, if the requirements are met, of the entry visa by the Italian consular representation (at this point the non-EU worker may enter into Italy);
- stipulation between the employer and the employee of a residence contract to be sent to the competent division of the Ministry of Internal Affairs (through the residence contract the employer commits, among other things, to hire the non-EU citizen within six months);
- application for a residence permit by the employee;
- release of the residence permit which has a maximum duration of two years and is renewable; and
- upon release of the residence permit, signing of the work contract.

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 changes frequently.

TAXATION

Tax regimes

37 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 fiscal year 2013 and 6.5 per cent for the following fiscal years.

COMMODITY PRICE CONTROLS

Crude oil mining

38 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?

In 1994, Italy abolished 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; therefore, it is possible to consult the monthly crude oil prices – free on board and cost, insurance and freight – and the average fuel price for customers.

COMPETITION

Competition enforcers

39 What government bodies have the authority to prevent or punish anticompetitive 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 anticompetitive 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 European Commission. Briefly, 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 anticompetitive 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 €504 million; and
- the domestic aggregate turnover of the target exceeds €31 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.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

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). In the event the Authority decides to conduct an investigation and such investigation reveals any infringements of competition laws, the Authority shall set a deadline within which the undertakings and entities concerned are to remedy the infringements. In the most serious cases it may decide, depending on the gravity and the duration of the infringement, to impose a fine up to 10 per cent of the turnover of each undertaking or entity during the prior financial year; time limits shall be laid down within which the undertaking shall pay the penalty.

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.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

The title on seismic and other relevant data belongs to the entity that has collected them. In any case, if the mining title terminates for whatever reason, within six months of termination date, the former holder of the mining title shall communicate and deliver the collected relevant data to the Ministry of Economic Development. For public interest purposes the seismic and other relevant data may be made available to other operators.

INTERNATIONAL

Treaties

42 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 1958 and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965.

Foreign ownership

43 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?

The upstream oil 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.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

Except for tax regulation, import and export are not subject to any specific permit or licence and there are no volumetric supply obligations for the Italian market that prevail over the export rights of the company producing oil.

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UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

A significant drop in oil demand is expected in Italy during 2020 as a result of the covid-19 outbreak. The urgent measures adopted by the Italian government have severely restricted movement inside and outside the country and this has led to a considerable drop in oil purchase and consumption demand. Another negative consequence was an oil oversupply that led to a drop in price.

On 8 April 2020 the Italian government issued Law Decree No. 23 (still subject to possible amendments) which has significantly amended the 'golden power' regulation protecting the internal market from possible speculative foreign investments. This Decree aims at strengthening the government powers to control investment in strategic sectors, including the energy sector. The main innovation of the Decree is that the duty of notification related to acquisitions of shareholdings in companies that hold strategic assets in the transport, energy and communications sectors is no longer limited to non-EU entities that take control of such companies, but it is extended to:

- intra-EU entities taking control of the companies;
- non-EU persons acquiring a shareholding of at least 10 per cent if the transaction is worth more than €1 million, or a shareholding in excess of 15 per cent, 20 per cent, 25 per cent or 50 per cent of the capital of the target companies. Every time any of these thresholds is exceeded, a new notification is required.

These measures will apply until 31 December 2020.

Typically, the oil market is subject to high volatility as well as to social and geopolitical events. Therefore, at least until the end of the covid-19 pandemic, it is still difficult to make a forecast on the future of the oil market. Despite the covid-19 outbreak, oil production in Italy has not stopped and the Italian government has already planned and approved several financial aid measures aimed at stimulating growth. It is expected that such measures will also be useful for the recovery of the Italian energy sector, including the oil sector.

Japan

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GENERAL

Key commercial aspects

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

In Japan, little crude oil is produced. For this reason, Japan is mostly dependent on oil imports as a source of primary energy. The details are described below.

Size and nature of oil reserves

Although oilfields exist in Japan, all of them are small and the production volume is not large.

The amount of oil reserves in Japan was 83.9Mmkl at the end of 2015. These consist mainly of national and private stockpiles.

Industrial organisation of oil activities

Oil has been extracted mainly in Niigata prefecture from the beginning of the Meiji era, and commercial production of oil is now taking place offshore in Hokkaido, Akita and Niigata prefectures.

Currently, about 23 oil refineries are in operation in Japan. Oil companies import (a small portion is domestically produced) crude oil from overseas, and produce and supply oil products such as petrol, kerosene, light oil, heavy oil, liquid petroleum gas (LPG) and petrochemical naphtha.

Refined oil products are delivered to consumers through oil tankers and refuelling stations using transportation means such as coastal tankers, tanker trucks, railway tanker wagons and pipelines. Transportation by tanker trucks and coastal tankers accounts for most of the total transport volume.

In recent times, moves such as business tie-ups ranging from refining to operational tie-ups in logistics are becoming common. Integration of refineries and distribution bases, systemisation of logistics information, etc, have been actively implemented to improve logistical efficiency and reduce costs.

In Japan, the term 'oil company' usually refers to a company engaged in importing, refining or selling crude oil and oil products; the term 'oil refiner and distributor' generally refers to the specific distribution to dealers, refuelling stations, kerosene stores, etc, that sell oil products to customers through distribution mechanisms and direct sales. Oil refiners and distributors and the sales industry are collaborating to strengthen value-added sales and to improve management efficiency at petrol stations, and to create new additional services (eg, self-service petrol stations).

Industry composition

As of April 2017, there are five to six major oil refiners and distributors in Japan. Recently, management integration and reorganisation of these companies has been accelerating, leading to the possibility that the number of companies will be reduced. In April 2019, as a result of the integration of Idemitsu Kosan Co and Showa Shell Sekiyu, there are five major oil refiners and distributors. Total sales of these companies are over ¥20 trillion a year.

Energy mix

2 | What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

Japan's energy self-sufficiency rate in the financial year 2017 was 9.6 per cent. The domestic primary energy supply in Japan for 2017 consists of 39.1 per cent oil, 25.2 per cent coal, 23.4 per cent natural gas, 1.3 per cent nuclear power and 11 per cent renewable energy.

With regard to oil as its primary energy, 99.7 per cent was imported in 2017.

Demand for crude oil and oil products has been declining in the current decade as a result of the promotion of alternative energy sources.

Government policy

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

In June 2002 the Basic Act on Energy Policy was enacted in Japan. Under this Act, the three basic energy policies (3E) were declared:

- energy security;
- environmental compliance; and
- utilisation of market principles.

In addition, the Act stipulated the division of roles between national and local government.

Under the Act, based on the 3E policies, a basic 10-year energy plan was defined to act as a stable indication of the fundamental direction of measures concerning energy supply and demand overall. In the basic energy plan, it was decided in relation to oil:

> *[I]t is essential to promote diversification of supply sources, cooperation with oil-producing countries, enhancement of crisis management, including stockpiling, effective use of crude oil, diversification of fuels for transportation, use of oil thermal power, etc.*

In addition, since oil will be an energy source of last resort in the event of a disaster, it is necessary to further strengthen the resilience of oil supply networks and to enhance the management foundation of the oil industry in order to maintain the nationwide supply networks in normal times while the decline of domestic demand and the enhancement of supply throughout the entire Asian region are concurrently occurring.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

A mining right is one of the rights concerning oilfields. A mining right, which is the right concerning the production of crude oil, is prescribed under the Mining Act. Mining rights are treated as physical rights under Japanese law. The grant and details of mining rights are registered in the mining register, which is maintained by the Ministry of Economy, Trade and Industry or its local office.

A predetermined fee will be charged for viewing or copying an entry in the mining register.

Legal system

5 | Describe the general legal system in your country.

The oil business is subject to civil laws such as the Civil Code, the Commercial Code, the Companies Act, etc. Specific legislation concerning the oil sector such as the Oil Stockpiling Act, the Petroleum Supply and Demand Optimisation Act and the Oil Pipeline Business Act has been enacted. An outline of these laws is as follows:

- Oil Stockpiling Act – securing oil stockpiles and the stable supply of oil. Under this act, those who intend to conduct oil import, oil refining, oil sales, etc, are required to obtain a licence in certain cases, subject to regulations set by the authorities;
- Petroleum Supply and Demand Optimisation Act – taking measures to ensure the proper supply of oil and limit the use of oil when there is a large shortage of oil supplies; and
- Oil Pipeline Business Act – regulating the operation of an oil pipeline project and establishes measures concerning security.

With respect to bribery, it is strictly regulated by the criminal penalties of the Penal Code, and punishment is governed by the Act on Punishment of Persons Holding Public Office who Acquire Benefits by Exerting Influence.

REGULATION OVERVIEW

Legal framework for oil regulation

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

Oil Stockpiling Act

The purpose of this Act is to ensure a stable supply of oil by taking measures to stockpile and appropriately distribute oil during possible national shortages and thereby contribute to the stability of citizens' lives and the smooth operation of the national economy.

Regulation varies slightly between oil importers, oil refiners, oil distributors, etc. However, it is roughly as follows. Note that the term 'oil refiner' refers to an operator who manufactures oil products using specific equipment (that has a processing capacity of 150kl or more calculated in accordance with the standards specified by the Ordinance of the Ministry of Economy, Trade and Industry). Oil distributors are businesses that sell oil and are limited to those of a certain size (eg, in the case of crude oil, if it is more than 200 litres).

To conduct these businesses, registration or notification licences are required. Further, when there is a change in the notified items (representatives, the location of the main office, the type and capability of the facility, etc), it is necessary to make a notification of the change. In addition, for businesses above a certain size, there is a stocking obligation and notification of production amount, etc, in the case of merger.

Petroleum Supply and Demand Optimisation Act

The purpose of this Act is to promote the stability of citizens' lives and the smooth operation of the national economy in cases where there is a shortage in oil supply or when there is a significant supply shortage of domestic oil owing to the occurrence of disasters with the aim to optimise the supply and demand of oil by securing the proper supply of oil and taking measures to reduce the use of oil.

As a regulatory summary, oil importers, oil refiners and specified oil distributors must prepare oil production plans and submit them to the Minister of Economy, Trade and Industry. In addition, the minister may order changes to the production plan (excluding an oil importer plan) if necessary. In addition, there are restrictions on the use of oil, and instructions on the holding of oil by specified oil distributors.

Oil Pipeline Business Act

The objective of this Act is to promote the oil pipeline business and at the same time regulate the security of the facilities, thereby realising reasonable and safe oil transportation, securing public safety and ensuring the stable and inexpensive supply of oil.

Regarding regulatory overview, 'oil pipeline business' refers to a business that transports oil using conduits belonging to the oil pipeline operator. In order to carry out oil pipeline business, permission from the competent minister is required. In addition, approval of the competent minister is required for any changes, assignment or merger of the business and suspension or abolition of the business. Approval is also required for construction and oil transportation.

Fire Service Act

The purpose of this Act is to prevent, guard against and suppress fires in order to protect the lives and property of citizens from fires, and to reduce the damage arising from fires or disasters such as earthquakes, thereby maintaining peace and order and contributing to the promotion of social and public welfare.

In the Fire Service Act, crude oil is designated as a dangerous good. Regarding the storage and handling of dangerous goods, permission for dangerous goods facilities is necessary if the amount stored or handled is over a specified quantity, and temporary storage and provisional handling also require approval. In addition, in dangerous goods facilities, in order to handle dangerous goods, it is necessary to retain persons qualified as dangerous goods handlers.

Regarding transportation of dangerous goods, restrictions exist on transport containers, loading methods and transportation methods.

Gas Business Act

The purpose of this Act is to protect the interests of gas users and achieve the sound development of gas businesses by coordinating the operation of gas businesses and to ensure public safety and prevent pollution by regulating the construction, maintenance and operation of gas facilities as well as the manufacture and sale of gas equipment.

Expropriation of licensee interest

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

Article 2 of the Land Expropriation Act stipulates that: 'when it is necessary to use land in the public interest, if it is appropriate and reasonable for the land to be used for the project, [a public authority] is able to acquire or use it pursuant to the provisions of this act.'

For example, various projects such as roads, rivers, railways, electric facilities, etc, are listed as 'projects that will benefit the public' in the Act. Under the Act, 'public benefit', which is a requirement for approving acquisition, is defined comprehensively.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

Holders of a mining right shall start their business within six months from the day of registration of the creation or transfer of a mining right. Holders of a mining right shall also specify the period, give the grounds and receive approval from the Director of Regional Bureau of Economy, Trade and Industry, if they intend to continue to suspend their business for one year or longer. Mining rights may be cancelled if these conditions are violated.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The relevant government authorities are the Ministry of Economy, Trade and Industry and the Agency for Natural Resources and Energy. The Ministry of Economy, Trade and Industry is responsible for all economic activity including the oil business, and the Agency for Natural Resources and Energy is in charge of affairs concerning energy in particular. In the case of violating the regulation or order issued by the relevant authority, a disposition such as a business suspension order, business improvement order, further revocation of licence, etc, may be imposed based on relevant laws and regulations.

As government enterprises Japan Petroleum Exploration Co Ltd (Japex) and Inpex Corporation are engaged in oil activities. Japex, in particular, produces crude oil across many Japanese oilfields.

Government statistics

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

The Ministry of Economy, Trade and Industry and the Agency for Natural Resources and Energy have published relevant statistics. In addition, the Ministry of Finance publishes general trade statistics.

NATURAL RESOURCES

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

The crude oil owner is the title holder over oil reservoirs. However, in order to extract crude oil, it is necessary to follow the Mining Act.

The Mining Act establishes 'mining right' as a right independent from landownership rights and grants this right by the action of the government based on a request. In other words, even landowners are prohibited from excavating or acquiring the minerals defined in the Mining Act (including crude oil) without obtaining mining rights.

A mining right is the right to mine and acquire registered minerals and other minerals existing in the same type of ore deposit in a fixed area of registered land. On the other hand, the superficial right (superficies) means the right to use the land of others in order to own structures, or trees or bamboo, on that land, and the legal nature of the superficies differs from the mining right.

With respect to the timing of the transfer of ownership, ownership shall be transferred at the time when the contract is concluded, unless otherwise agreed. However, in order to assert the transfer of ownership against third parties other than the parties, 'delivery' is necessary based on article 178 of the Civil Code.

Exploration and production – general

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

In Japan, crude oil is barely produced, and at present, 99.7 per cent of crude oil is imported. Regarding domestically produced crude oil, most oilfields in Japan are concentrated in the coastal part of the Sea of Japan.

Exploration and production – rights

13 | How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

Obtaining a mining right is required for mining crude oil under the Mining Act. The mining right consists of a prospecting right and a digging right.

The period of a prospecting right is two years (four years in the case of oil and combustible natural gas), but if the government agrees the need for exploratory drilling, it can be extended twice. Also, there is no time limit for mining rights.

In order to set up mining rights, one must first file an application for the grant of a mining right and obtain permission from the Minister of Economy, Trade and Industry or the Director of the Bureau of Economy, Trade and Industry, which has jurisdiction over the scrutiny of applications. In addition to the address and name of the applicant, the application should clarify the location and area of the application, the name of the intended mineral and also an area map created according to a predetermined drafting method. In addition, it is necessary to attach a document certifying that it conforms to the permission criteria so that reasonable resource development can be carried out by the appropriate entity.

An application for mining is examined, and the mining right will become effective after approval of the application, the payment of the registration licence tax (the registration licence tax for mining rights is ¥180,000 and ¥90,000 for prospecting rights) within the designated period and the receipt of the mining registration. In addition to the setting of mining rights, it will not be effective and a person cannot assert such effect against the third parties unless that person receives mining registration concerning any change, extension of duration, transfer, disappearance and restriction on disposition, etc. Details of mining registration are available to the public at the mining registry. As mining rights are the right to mine and acquire minerals, it is not permissible to merely hold such rights without using them. For this reason, mining rights-holders are generally obliged to start business operations promptly after obtaining permission.

Government participation

14 | 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 Japan, production of crude oil is rarely expected, therefore, at present, there is no such system.

Royalties and tax stabilisation

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

Royalties are determined by the parties through agreement. Since almost no crude oil is produced in Japan, there are no such measures at present.

Licence duration

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

The period of a prospecting right is two years (four years in the case of oil and combustible natural gas), but if the government agrees the need for exploratory drilling, it can be extended twice. There is no time limit for mining rights.

Extent of offshore regulation

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

Japanese sovereignty extends to Japanese territorial waters. Japan has sovereign rights over the exclusive economic zone, which is extensive.

Onshore offshore regimes

18 | 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 particular difference under the law. However, in the case of offshore projects, regulations concerning the Act on the Prevention of Marine Pollution and Maritime Disasters, the Port and Harbour Act, the Act on Port Regulations and the relevant regulations would apply. Both crude oil and natural gas are subject to mining rights.

Authorised E&P entities

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

Mining rights cannot be obtained in Japan unless the applicant is a Japanese individual or Japanese company. Therefore, in order to acquire mining rights, it is necessary to establish a company under Japanese law or acquire such company. The establishment of a company based on the Company Act would cost at least ¥200,000.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

Holders of a mining right shall start their business within six months from the day of registration of the creation or transfer of a mining right. Holders of a mining right shall also specify the period, give the grounds and receive approval from the Director of Regional Bureau of Economy, Trade and Industry, if they intend to continue to suspend their business for one year or longer. Mining rights may be cancelled if these conditions are violated.

Joint ventures

21 | What is the legal regime for joint ventures?

In order to create a joint venture, it is possible to jointly carry out business by making a joint investment. In this case, procedures under the relevant law for establishment of the joint venture shall be followed. There are various methods, and it is possible to conclude a joint venture agreement or a simple partnership agreement under the Civil Code, establish a limited partnership under the Limited Partnership Act for Investment and establish a joint-stock company with a joint investment. However, depending on the legal basis, it should be noted that a joint venture is not necessarily a legal entity. For a joint venture to obtain mining rights, it is necessary to establish a legal entity in Japan.

Reservoir unitisation

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

There is no law in Japan covering reservoir unitisation at present.

Licensee liability

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

There is no such concept. As for limitation of liability between contract parties, it is subject to what the parties have agreed.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

There is no such requirement. It is decided subject to the agreement between the parties.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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

There are no such local content requirements.

Social programmes

26 | Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

There are no such obligations.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 | 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 by the authorities is not required for assignment of interest in crude oil business. However, the following restrictions on business combinations and others would apply.

Oil Stockpiling Act

In cases where an oil importer, oil refiner or specified oil distributor assigns the whole businesses or merger, etc, the transferee, the acquirer or the surviving entity must notify the authorities.

Oil Pipeline Business Act

Assignment of whole businesses or mergers, etc, by the oil pipeline business operator shall not have legal effect unless approved by the competent minister.

Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade

Prior notification is required based on the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade with respect to the share acquisition, the concurrent positions of officers, mergers, divisions, and business acquisitions if over a certain size. For example, in the case of a share acquisition, if the domestic sale of the acquirer's business combination group is over ¥20 billion and the domestic sales of the acquiree's business combination group is more than ¥5 billion and, by acquiring the shares, the total share ratio (calculated on the acquirer's business combination group's basis) to the target company exceeds 20 per cent or 50 per cent, notification is required.

Usually, the waiting period is about 30 days unless there is a problem, but matters requiring careful consideration may take longer.

Approval to change operator

28 | Is government consent required for a change of operator?

There is no such requirement.

Transfer fees

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

There are no such fees or taxes.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

Except where the Act on General Rules for Application of Laws applies, the Japanese Civil Code is applied and the owner of the facility holds the title.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 | 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 cases where an oil importer, oil refiner or oil distributor abandons the business, notification to the Minister of Economy, Trade and Industry is required under the Oil Stockpiling Act.

In the case of an oil pipeline business, permission of the competent minister is required to abandon its business under the Oil Pipeline Business Act.

Security deposits for decommissioning

32 | 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 such regulation. However, in the event that the oil pipeline business operator abandons the business, advance permission of the competent minister is required.

TRANSPORTATION

Regulation

33 | 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?

Domestic transportation

Regarding the domestic transportation of crude oil, there are no specific regulations except for the regulations of the Fire Service Law.

Import from a foreign country

Registration of oil importers is necessary pursuant to the Oil Stockpiling Act. In addition, when importing and selling more than a certain quantity (200 litres in the case of petrol), it is obligatory to follow notification, report and collection, and on-site inspection conditions.

In addition, when importing petrol, pursuant to the Act on Securing the Quality of Petrol, etc, it is necessary to submit a notification form each time an import is made. The notification must be made to the Bureau of Economy, Trade and Industry, which has jurisdiction over the landing area, within seven days from the date of customs clearance.

The relevant authorities are the Ministry of Economy, Trade and Industry in relation to the oil business and the Ministry of Land, Infrastructure and Transport in relation to the transportation of tankers and trucks.

COST RECOVERY

Determining recoverable costs

34 | Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

To establish concessions there is the Act on Promotion of Private Finance Initiative in Japan, but the scope of this act is limited to public facilities and others whose managers are public officials. In private projects, however, it is possible to decide by agreement on the recovery of expenses in principle.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 | What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

It is necessary to comply with Japanese labour law. In particular, according to the Industrial Safety and Health Act, at a workplace where there are always more than 300 workers, a full-time safety manager

must be in place. In addition, the Act requires the establishment of a safety and health management system. The Ministry of Health, Labour and Welfare is the relevant authority.

Regarding the oil pipeline business, it is necessary to establish safety regulations, and to appoint safety engineers and persons engaged in safety work.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Japan has no specific standards. Japanese labour law also applies to foreign workers. In Japan, when foreigners want to undertake paid employment activities, it is necessary to obtain a visa. Discrimination by nationality is forbidden in Japan, because article 3 of the Labour Standards Act states: 'Employers shall not use the nationality, creed or social status of any workers as a basis for engaging in discriminatory treatment with respect to wages, working hours or other working conditions.' Violation of this provision may lead to punishment under article 119(1) of the Labour Standards Act and may give rise to civil damages.

TAXATION

Tax regimes

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

Taxes on crude oil include oil tax at the time of importing the crude oil. At the stage of oil production, taxes on oil products such as petrol taxes, gas oil taxes, etc, are imposed. Finally, consumption tax is imposed at the consumption stage.

COMMODITY PRICE CONTROLS

Crude oil mining

38 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?

It is impossible for the government to forcibly determine the price of oil. However, under article 4 of the Petroleum Supply and Demand Optimisation Act, when the oil supply and demand situation in Japan is urgent, the Prime Minister may issue instructions to change the oil production plan, restrict the use of oil and so on. If the situation is not resolved, a government ordinance may decide necessary matters concerning the allocation or distribution of oil or the restriction or prohibition of the manufacture, use, assignment or transfer of oil.

COMPETITION

Competition enforcers

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

In relation to anticompetitive practices, such conduct is prohibited by the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade, and the Japanese Fair Trade Commission is the relevant authority. In addition, in relation to subcontractors there is the Act against Delay in Payment of Subcontract Proceeds, etc, to Subcontractors, and the relevant authorities are the Japan Fair Trade Commission and the Small and Medium Enterprise Agency.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

Prior notification to the Japan Fair Trade Commission is required based on the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade with respect to the share acquisition, the concurrent positions of officers, mergers, divisions, and business acquisitions over a certain size.

Usually, the waiting period is about 30 days unless there is a problem, but matters requiring careful consideration may take longer.

Regarding the Competition Act of Japan, a party can consult informally with the competent authority and can simply obtain a basic opinion on the matter. In a case of violation of the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade, it will be subject to an exclusion measure order or a surcharge payment order by way of administrative punishment. There is also the possibility of criminal sanction if it violates private monopoly and unreasonable transaction restrictions (eg, a cartel).

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

The owner of seismic data will be governed by the terms of the contract. Authorities generally cannot require any data owner to report or release the data. However, data owners registered under certain laws may be required to report or release the data.

INTERNATIONAL

Treaties

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

There are no treaties or multinational agreements that directly or indirectly affect the regulatory policy of Japan.

Foreign ownership

43 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?

In the case of investing in the crude oil extraction business in Japan, prior notification may be necessary in some instances under the Foreign Exchange and Foreign Trade Act. In principle, the notification would be cleared within 30 days as a result of prior notification; but in extremely exceptional cases, if there is a problem, a change or discontinuation recommendation may be made.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

The Oil Stockpiling Act and Petroleum Supply and Demand Optimisation Act will apply to oil importers, and registration will be required.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

In light of petroleum's importance, the value of strengthening the petroleum industry's management base is set out in the Strategic Energy Plan (approved by the cabinet in July 2018).

Along with the Strategic Energy Plan, the Report of the Study Group on Competitiveness of the Petroleum Industry (18 July 2018) states that it further expects an accelerating decline in oil demand for the domestic market, intensifying competition in Asia where demand is expected to increase and overseas environmental changes such as electric vehicle adoption, etc. The oil refining industry in Japan, which has mainly focused on the domestic market, needs to improve to international standards.

The report proposed change by maintaining the foundation of the domestic oil refining industry and securing flexible and robust supply capacity. Specifically:

- strengthening the international competitiveness of its refineries and complexes by achieving export parity (exportable productivity);
- changing the business portfolio such as expanding into petrochemical and other new business areas; and
- recognising that overseas business development contributes to the diversification of the oil value chain.

It is expected that future Japanese regulatory reform will follow these principles.

In recent years the degree of technological difficulty in resources development has become more sophisticated and complex, and in addition competition between state oil companies from countries experiencing a marked increase in demand for fossil fuels (such as China and India) and Japanese resources development companies has been intensifying. However, the scale of production and financial base of Japanese resources development companies are smaller than those of the major Western resources companies and the state oil companies in the emerging countries, so the strengthening of their international competitiveness is an urgent issue. On the other hand, regarding the energy mix, fossil fuels are expected to account for approximately 80 per cent of the primary energy supply even in 2030, so in Japan, a country with few energy resources, securing a stable supply of oil, natural gas and coal will continue to be an important issue.

Taking into account this situation, it is necessary to continue to make efforts to secure interests in upstream projects to ensure a stable supply of oil, natural gas and coal, and to establish a resilient industrial structure so that Japan does not lose out in the competition with foreign countries. For this reason, the government is aiming to raise the oil and natural gas independent development ratio (27 per cent in FY2016) to 40 per cent in 2030, and to maintain the coal independent development ratio (61 per cent in FY2016) at 60 per cent in 2030.

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GENERAL

Key commercial aspects

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

Mexico is and is likely to continue being one of the world's major crude oil producers, and certainly a large consumer. After decades of a vertically integrated monopoly in the oil industry, the energy value chain was liberalised in 2014, bringing significant interest and participation of international operators. According to the most recent data published by the National Hydrocarbons Commission, Mexico had total hydrocarbons reserves of 25,106 million barrels of crude oil equivalent. Around 81 per cent of crude oil is produced offshore while 19 per cent is produced onshore.

As of February 2020, national production of oil was 1,721 mbpd, a 1.5 per cent increase compared with February 2019. This relative stability in the production platform is the result of the new federal administration's plan to maintain and increase production of oil by implementing a plan for 20 priority fields operated by Mexico's state-owned oil company, Pemex.

Of total production, around 1,060 is considered heavy crude, 490 light crude and 185 superlight crude.

The aforementioned plan and the arrival of new operators onshore and offshore is one of the elements that will be likely to stabilise and improve the production platform.

Despite the upstream sector opening to private investment, Pemex continues to be the dominant operator currently accounting for more than 96 per cent of total production. This number will certainly change as the production from private operators comes online.

In the midstream sector, during 2019 around 40 per cent of oil production was refined domestically. 2019 saw an increase of 7.28 per cent in the volume of crude oil refined by Pemex, with an average utilisation of 40 per cent for all six Pemex-owned refineries.

When compared with 2018, in 2019 imports of gasoline and diesel decreased by 2 per cent and 11 per cent, respectively, while imports for jet fuel and fuel oil increased by 4 per cent and 17 per cent, respectively. As a result, during this same period, imports of refined products decreased by 3.4 per cent.

Total demand for refined products in Mexico at the end of 2019 was 1,371 mbpd (a reduction of 1 per cent when compared with 2018). Of all oil refined in Mexico, 41 per cent is gasoline, 27 per cent is fuel oil, 25 per cent diesel and 7 per cent jet fuel.

Demand for fossil fuels in the power generation industry is around 967.5 million barrels of crude oil equivalent. Around 15 per cent of that is fuel oil and 1.2 per cent diesel fuel, with the remaining being divided among natural gas (70 per cent), coal (12 per cent) and petroleum coke (2 per cent).

Since the industry was opened up to attract investment, both major and junior oil companies have participated in all sectors of the industry. Foreign and domestic firms have been awarded exploration and production contracts (E&P contracts) with and without joint ventures with Pemex; a total of 112 E&P contracts have been awarded by the Mexican government in three bidding rounds, with an estimated financial commitment of over US$12 billion.

Although legally the sector is open to private investors, Pemex continues at this stage to be the sole refiner of oil. However, significant storage infrastructure for both crude oil and refined products is being developed by private investors in key points throughout Mexico. In the downstream sector, although there are more than 100 different fuel brands, Pemex continues to supply 90 per cent of all petroleum and diesel consumed in Mexico. Pipeline transportation continues to be carried out predominantly by Pemex through its subsidiary Pemex Logistica, although the market is open to private investment.

Energy mix

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

According to the International Energy Agency, by the end of 2018 Mexico's total consumption of energy was around 183,000 ktoe, out of which almost 83,000 came from oil and 63,000 from natural gas. Of all motor fuels consumed in Mexico, about 73 per cent is imported. Although Mexico is one of the top oil producing countries, only 40 per cent of that production is refined domestically. Roughly 70 per cent of all refined products consumed in Mexico is used in transportation with industrial and residential use averaging 10 and 8 per cent, respectively.

Around 20 per cent of all electricity generated in Mexico comes from clean technologies. These technologies include solar, wind, geothermal, hydropower, nuclear and biomass.

Government policy

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

The Ministry of Energy (SENER) is responsible for Mexico's general policymaking, including oil related activity. SENER determines whether any oil resources will be auctioned for the award of exploration and production (E&P) contracts to operators, or developed by Pemex, and includes them in an E&P five-year plan. The National Hydrocarbons Commission – the upstream regulator granted technical and operational autonomy but under the oversight of SENER as policymaker – is responsible for conducting block auctions and awarding the contracts to operators.

SENER is also responsible for establishing a minimum inventory (CSO) policy for refined products to ensure security of supply.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

Yes. Other than entitlements granted to state-owned companies like Pemex, all petroleum granting instruments in Mexico are exploration and production contracts and may only be awarded by the Mexican state through the CNH. These E&P contracts are registered by the National Hydrocarbons Commission (CNH). and can be freely accessed by any third party. In that register, full copies and any amendments to the contracts can be accessed, including the names of the companies holding these contracts and the companies issuing parent company guarantees.

Legal system

5 | Describe the general legal system in your country.

Mexico is a civil law country. Mexico is a federal state and the Mexican Constitution establishes exclusive federal jurisdiction over certain limited matters, which include business organisations, hydrocarbons and energy, among other things. Anything not expressly reserved to the federation (eg, real estate) may be regulated by any of the 32 federal entities in Mexico. The Federal Congress enacts general and federal legislation; the Executive Branch may issue regulations on federal laws. Moreover, autonomous regulators also issue regulations in the form of resolutions and general administrative provisions.

The Judicial Branch is made up of the Mexican Supreme Court, the Electoral Tribunal, collegiate and unitary tribunals and district Courts, all of which, with the exception of the Supreme Court, are regulated by the Federal Judicial Council. Each federal entity has its own judicial system consisting of multiple courts hearing local matters and a superior court.

Mexican courts, including the Supreme Court, may create legal criteria on specific provisions of law through the issuance of binding court precedents that should be followed by lower courts.

The rule of law is generally upheld in Mexico. There are no specific issues with the enforcement of contract or property rights under Mexican law. There are, however, real property regimes (mainly agrarian property) different to private property and governed by agrarian laws. Many areas of land where oil activities are usually undertaken are covered by this different regime of property rights.

Both domestic and foreign judgment and arbitral awards are enforceable in Mexico. In the case of judgments, the process is long and formalistic, but to the extent the relevant judgment and legal proceeding followed abroad complied with due process of law, a Mexican court will enforce a foreign judgment following principles embodied in several international conventions to which Mexico is a party. With respect to arbitral awards, Mexico is not only a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and other relevant treaties on the subject, but also a very strong proponent of arbitration, and Mexico's civil courts would generally uphold arbitral awards for enforcement, but would also refuse jurisdiction on arbitrable matters where an arbitration agreement exists.

Mexico recently enacted substantive legislation on anti-corruption matters. In July 2016, the Federal Congress published the General Law on the National Anti-Corruption System and the General Law on Administrative Liabilities (GLAL). The National Anti-Corruption System is intended to coordinate the fight against corruption at the federal, local and municipal levels. In turn, the GLAL imposes sanctions on individuals, corporation and public officials liable for serious offences.

Under the GLAL, to determine the extent of companies' liability, the relevant court or authority takes into account the existence of a compliance policy that incorporates, at least, the elements listed in the GLAL, which include:

- a complete organisational manual establishing the duties and responsibilities of each area;
- a code of conduct duly publicised and distributed among the company;
- adequate and functional systems for control, oversight and audit that are undertaken constantly and periodically;
- whistleblower programmes and disciplinary enforcement;
- adequate training and education;
- human resources policies preventing potential risks; and
- mechanisms that ensure the transparency and publication of interests.

Under article 95 of the Hydrocarbons Law, the Federal Executive Branch exercises exclusive jurisdiction over the oil industry. Moreover, pursuant to article 22, exploration and production contracts are governed by this federal statute and the Regulations to the Hydrocarbons Law; anything not provided for thereunder is governed by Mexican laws.

REGULATION OVERVIEW

Legal framework for oil regulation

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

The legal framework governing Mexico's oil sector consists mainly of the following statutes and regulations:

- The Hydrocarbons Law structures and organises the whole sector, including upstream, midstream and downstream. With respect to upstream, it governs the procedures for granting of contracts and licences to operators, their terms, and principles and rules for the operators, among other things. With respect to midstream and downstream, it establishes the permit regime under which these activities can be performed, their terms and the special rules that apply to each activity.
- The Law of Co-ordinated Regulators for the Energy Sector sets forth the structure and jurisdiction of the National Hydrocarbons Commission (CNH) and Energy Regulatory Commission (CRE), their powers and mandate, and their co-ordination with the Ministry of Energy (SENER) as policymaker.
- The Pemex Law governs the structure and mandate of Petróleos Mexicanos, as a 'state productive enterprise' entrusted with creating value, and sets forth its corporate governance principles among which its board of directors is given discretion for a number of decisions which in the past limited the operation of Pemex as a commercial company.
- The Hydrocarbons Revenues Law sets forth the taxes and fiscal regime in general for upstream activities, including royalty levels and other taxes, and the special fiscal regime applicable to Pemex.
- Regulations to the Hydrocarbons Law implement in detail the rules for the granting of upstream contracts and licences, rules for operators, the special regime that governs Pemex as the state operator, and they prescribe terms regarding contents of the contracts and licences, among other things.
- The Regulations to Title III of the Hydrocarbons Law contain the implementing regulation midstream, under which the CRE grants permits for distribution, storage, transportation, marketing and retail of products.

In addition, the statutory framework provides both the CRE and CNH broad rule-making powers to interpret the laws and implement further regulations, which they do in the form of general provisions governing a number of issues, from rules for bids upstream, to rules for open access on midstream assets.

Expropriation of licensee interest

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

Pursuant to section VII of article 1 of the Expropriation Law, the defence, conservation, development or use of natural resources susceptible to exploitation is considered within the public interest and can be expropriated. The Expropriation Law establishes a procedure to notify the affected party and the compensation that the government shall pay.

For historical and political reasons and considering that the government maintains a right to administratively or contractually rescind any exploration and production contract, it is unlikely that the Mexican government would avail itself of the Expropriation Law to reclaim any oil assets. It remains, however, under the applicable legal framework, a right of the Mexican government.

Importantly, expropriation of assets or companies in the sector would be subject to the rules related to investment protection under bilateral investment treaties and the investment chapter of free trade agreements, including the United States-Mexico-Canada Agreement (USMCA) once it becomes effective, and NAFTA (for as long as it remains in effect). Mexico has one of the broadest ranges of treaties of this nature, covering almost all investor countries.

Revocation or amendment of licences

8 May the government revoke or amend a licensee's interest?

Yes. All exploration and production (E&P) contracts establish the possibility to rescind (terminate with cause) if the operator or its partners are in default of the provisions of the E&P contract (after a due cure period has elapsed). There are two separate scenarios: the first, dealing with material breaches that can trigger the administrative rescission procedure provided for under article 20 of the Hydrocarbons Law and the second, dealing with lesser breaches which trigger a termination procedure. Article 20 of the Hydrocarbons Law lists the events that may trigger the administrative rescission including:

- failure to conduct activities in a contract area for a term exceeding 180 days, without the authorisation of the National Hydrocarbons Commission (CNH);
- failure to complete minimum work obligations;
- assignment of control without the prior consent of CNH;
- the occurrence of a serious accident caused by the negligence or wilful misconduct of the operator,
- knowingly submitting false information to the government;
- disregard of an order by a judicial authority; and
- failure to make payments in favour of the state.

Unlike rescission of E&P contracts for other events, any matter related to the administrative rescission procedure is not subject to the arbitration provisions under E&P contracts and is exclusively heard and resolved by Mexican federal courts.

Regulators

9 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The National Hydrocarbons Commission is the upstream the technical regulator responsible for, among other things:

- approving exploration, appraisal and development plans;
- reserves;
- well authorisations;
- managing and licensing out data;
- metering of oil production;
- technical supervision of exploration and production (E&P) contracts and entitlements; and
- consenting to any changes in corporate control or control of operations of a block.

It is also responsible for conducting the bid processes to award E&P contracts, and it acts as the Mexican state's representative both in the process of the bid and in the management of the contract.

The Ministry of Energy is responsible for the selections of blocks, and the type of contract under which those blocks are operated. It is also involved in regulation of unitisation procedures and payment of landowners' compensation in upstream activities, among other things.

The Secretariat of Finance and Public Credit determines the financial and fiscal aspects of E&P contracts (eg, licence royalty) and is, along with the Mexican Petroleum Fund for Stabilisation and Development responsible for their supervision.

The Secretariat of the Economy regulates national content and technology transfer programmes.

Health, safety and environmental matters are handled by a separate environmental agency created specifically for the oil and gas industry: the Agency for Safety, Energy and Environment.

Government statistics

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

The Ministry of Energy and the National Hydrocarbons Commission (CNH) maintain the statistics. This information is generally included in sector-specific documents with a 14-year horizon, and is also recorded by the National Centre for Hydrocarbons Information operated by the CNH.

The CNH maintains a website with monthly information on reserves and production of entitlements and E&P contracts.

NATURAL RESOURCES

Title

11 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

Like many other jurisdictions, Mexico has a state-ownership principle with respect to hydrocarbons. Under the Mexican Constitution, all domestic hydrocarbons belong to the nation, which then entrusts different operators with their exploitation. No rights or claims to the hydrocarbons are contemplated for states, municipalities, other political subdivisions or any other constituencies, such as indigenous groups.

There is no distinction between private and public lands. Owners of the surface hold no rights to the oil below it. In the case of onshore developments, however, landowners directly above a commercial extraction area are entitled to a limited percentage of revenues (not exceeding 3 per cent) of the relevant production. The determination of these percentages is regulated by the Ministry of Energy following the publication of certain rules.

Depending on the type of contract (licence or PSC), title to the oil passes at different stages but the general rule is that ownership is transferred to the operator at the relevant metering point designated in each contract.

Exploration and production – general

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

The general character of oil exploration and production is offshore. Exploitation of oil resources in natural protected areas and environmental reserves is forbidden. In addition, the Executive Branch may establish safeguard zones both in offshore and onshore areas. No oil contracts or entitlements may be granted over these areas.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

Under the Mexican Constitution, there are only two types of petroleum granting instruments: E&P contracts and entitlements. E&P contracts may be awarded to private parties and state-owned companies known as state productive enterprises (ie, Pemex). Entitlements are exclusively granted to state productive enterprises (Pemex).

E&P contracts are exclusively granted following a public bidding process conducted by the CNH. While companies may nominate certain areas or acreage that they would like to bid on, this request is not technically an application, and it does not grant any preferential rights to the company that suggested the inclusion of such block or acreage in the relevant bid.

Bid processes are called via publication in the Federal Register. The rules of the bid process are made available by the National Hydrocarbons Commission (CNH) on a public website accessible to any interested party. These rules include the model contract and the requirements that any interested party shall satisfy to pre-qualify and bid for any contracts. The process is generally structured into four main stages: (i) questions and answers, (ii), pre-qualification (where the credentials of interested parties are reviewed by the CNH), (iii) formation and authorisation on the formation of consortiums, and (iv) bid submission, review and award of contracts.

The non-refundable cost to participate in the last bidding round called by the Mexican government was US$46,000. Moreover, access to the relevant data room should also be paid at a fee that varies depending on the size of the blocks.

From the date a bid process is officially announced by the CNH to the date the bids are due, usually takes from 10 to 12 months.

The terms and conditions of E&P contracts are non-negotiable. Any awarded party is expected to execute the final version of the model contract as included in the bidding rules without changes. During the bid process, however, participants may submit questions and suggestions on the terms and conditions. During a bid process, the CNH usually revises the model contract four to six times.

The latest round and bids were held by Mexico in 2018, under the past government administration

Government participation

14 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?

There are three specific scenarios where the Pemex may participate in E&P contracts:

- if the relevant contract area coexists with an entitlement area (an area operated by Pemex under an entitlement) at a different depth;
- if there is are any technology transfer opportunities for Pemex or other state-owned companies; and
- if the Mexican state wishes to promote a project through a specialised financial vehicle. In the last two cases, the participation of the state's working interest shall not exceed 30 per cent.

In addition, in any E&P contracts where there is a possibility of finding trans-boundary reservoirs, the participation of the state through Pemex or another state productive enterprise is mandatory; and the state's working interest cannot be less than 20 per cent.

In addition, Pemex is entitled to participate as an additional player in the open rounds for the award of E&P contracts, whether on its own or in a consortium with other players, something Pemex has actively done in past rounds. No special carry obligations exist for Pemex in these cases. Note, however, that Pemex may also bring existing entitlements and convert them into E&P contracts as a joint venture with another partner. In such cases, where Pemex contributes the existing entitlement, there is generally a carry payable by the partner, and the contract (the 'farmout') is awarded through a competitive bid hosted by the National Hydrocarbons Commission.

Royalties and tax stabilisation

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

Royalties due under E&P contracts are established by the Hydrocarbons Revenue Law. Royalties are defined as the consideration payable in favour of the Mexican state based on the contract value of oil considering the formula established in that federal statute.

According to article 24 of the Hydrocarbons Revenue Law, whenever the contract value of crude oil is below US$48, the applicable fixed royalty is 7.5 per cent. If equal to or higher than US$48, the royalty is determined based on a formula that takes the price into account. Under each E&P contract, royalties are adjusted each year based on the US Consumer Price Index. There are royalties due on other hydrocarbons such as natural gas (associated or not) and condensates.

In addition to taxes and royalties, depending on the type of E&P contract, other payments to the state apply. In the case of licences, these may include signature bonuses, a rental payment known as the 'contractual fee for the exploratory phase' and a rate that is applied to the contract value of oil. In the case of PSCs, in addition to the rental payment and royalties, a percentage is applicable to the operating profits.

Although not technically a standard stabilisation clause, E&P contracts contain provisions that establish that the SHCP must make adjustments to the consideration payable to the state to 'restore the economic balance of the contractor' to equate to the fiscal regime at the time the contracts were awarded if the tax regime related to exploration and production changes.

Licence duration

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

The customary duration of E&P contracts is 25 years. Generally speaking, they may be extended up to a total term of 50 years.

Extent of offshore regulation

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

Under the Mexican Constitution and the Hydrocarbons Law, the jurisdiction and regulatory regime of the Mexican government extends to the exclusive economic zone.

Onshore offshore regimes

18 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?

Generally speaking, onshore and offshore production is subject to the same regulation with one main difference: onshore operators must negotiate and finalise land use agreements, which may include the payment of a percentage of profits once the project is commercially producing oil. Onshore operators are required to use the Ministry of Energy's model agreement, and they require the operator to follow a certain procedure established under the Hydrocarbons Law and its Regulations. In addition, any agreements reached between the operator and landowners requires the validation of a federal court that grants res judicata status to the agreement.

Other than regulation on HSE matters and the specific programmes that the operator shall present to the CNH for its approval (particularly for unconventional resources), the legal regime to explore for and produce all hydrocarbons is the same. In the case of coal-bed methane, however, mining concessions that were in effect when the Hydrocarbons Law was enacted, are allowed to apply for and be awarded an E&P contract without exhausting a bidding process to the extent they are able to satisfy the credentials required by the Mexican government.

Authorised E&P entities

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

E&P contracts may only be executed by companies incorporated under the laws of Mexico and state productive enterprises such as Pemex. Therefore, any international companies or consortiums awarded an E&P contract are required to incorporate a business organisation in Mexico whose exclusive corporate purpose is to carry out hydrocarbons exploration and extraction activities.

Foreign investors typically choose either a limited liability company (*sociedad de responsabilidad limitada*) or stock company (*sociedad anonima*). The process to incorporate a company in Mexico requires at least two partners or shareholders and that the investor undergoes a know-your-client process with the attestor that will incorporate the company. The company will be registered in a public commercial registry, a taxpayers' registry and a foreign investment registry. In all, the incorporation process may take up to two to three months, but may only take three weeks (including the registration).

While there are no significant government fees around the incorporation of a company, the incorporation of a special purpose vehicle may cost between US$5,000 and US$8,000, depending on a variety of factors such as the governance of the company, and powers and authorities granted to specific individuals, among other things.

Regulatory powers over operators

20 What controls does the regulatory body have over operators? Can operatorship be revoked?

Operatorship cannot be revoked by the CNH. Under E&P contracts, however, other members of the relevant consortium are allowed to change the operator under their relevant joint operating agreement, and the operator may resign from the appointment with prior consent from the CNH.

Controls over the operator are maintained through various regulatory instruments issued by the CNH and the Agency for Safety, Energy and Environment. These include, among other things:

- HSE rules (including approval of management system) for conventional and unconventional resources;
- minimum insurance requirements rules;
- use (or disposal) of associated (casinghead) gas;
- quantification and certification of reserves;
- drilling permits;
- metering of hydrocarbons;
- exploration and development for production plans;
- secondary and enhanced recovery;
- prospective and contingent resources;
- use, handling and delivery of G&G data; and
- methane emissions.

Joint ventures

21 What is the legal regime for joint ventures?

Joint ventures are not specifically regulated in Mexico. Private parties are free to agree on joint ventures that are governed by the laws of Mexico or the laws of another jurisdiction, including alternate dispute resolution mechanisms heard in Mexico or abroad. In the specific case of the Mexican upstream sector, companies are allowed to participate in bidding procedures either through unincorporated joint ventures (consortiums) or a partnership agreement.

In the case of consortiums, other than submitting a short-form joint venture agreement before the CNH, there are no other specific formalities to participate in a bid process or hold a working interest in an E&P contract. As is standard in the industry, joint ventures on the upstream side are governed by a joint operating agreement, which may or may not be governed by the laws of Mexico.

Reservoir unitisation

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

Reservoir unitisation is within the purview of SENER in accordance with article 42 of the Hydrocarbons Law. The procedure is further regulated by the Regulations to the Hydrocarbons Law, guidelines issued by SENER in 2018 and the terms of the relevant E&P contract. In the case of cross-border reservoirs, this would be governed by international treaties to which the Mexican government is a signatory, including the Agreement between the United Mexican States and the United States of America relating to Hydrocarbons Cross-Border Reservoirs in the Gulf of Mexico.

If an operator discovers any shared field or reservoir, it must notify SENER within a term not exceeding 60 business days following the discovery. The notice shall contain, at least, information on the general characteristics of the shared field or reservoir, studies inferring its existence, and any additional information deemed convenient by the operator. Thereafter, based on the information received and an opinion rendered by the CNH, SENER will determine the existence of shared fields or reservoirs.

Under SENER's unitisation rules, private companies and state-owned companies may request SENER to authorise the execution of a preliminary unitisation agreement (PUA) to establish the necessary activities to satisfy the requirements to provide the notice about the discovery of a shared reservoir. PUAs have an initial effective renewable term of up to two years, unless a greater term is approved by SENER. Operators are allowed to satisfy minimum work obligations as part of the PUA to the extent they are consistent with the relevant plan approved by the CNH.

Once SENER has determined the existence of a shared reservoir, before obtaining an opinion from the Ministry of Finance and Public Credit, SENER will order the unitisation of the reservoir. Once the order is issued, the adjoining operator shall submit a proposed unitisation agreement (UA) which shall include, at least, the requirements of article 21 of the unitisation rules. As part of the negotiation of the UA or the issuance of a unitisation order, adjoining operators may share information and data on the areas subject to unitisation.

In case adjoining operators are not able to reach an agreement on UA or certain terms of the UA are not consistent with the regulation, SENER will determine the terms under which the unitisation will take place (or amend the proposed UA). This is called a unitisation order.

Under the unitisation rules, operators may make redeterminations to adjust the distribution of oil volume in the shared reservoir and, as a consequence, the participating percentages under the relevant UA or unitisation order.

Licensee liability

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

In accordance with section XIV of article 19 of the Hydrocarbons Law, the liability of the operator under an E&P contract is unlimited in cases of negligence or wilful misconduct. In addition, liability among the members of a consortium is joint and several.

Guarantees and security deposits

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

Under the Hydrocarbons Law, all E&P contracts shall contain provisions around the procurement of insurance and guarantees. In practice, all E&P contracts establish that the operator and its partners shall provide performance guarantees (usually in the form of a standby letter of credit or a bond) and corporate guarantees.

Performance guarantees are required to secure the performance of minimum work commitments.

Corporate guarantees may be provided by the ultimate parent company or an affiliate that satisfies the financial wherewithal established in each E&P contract. Each member of the consortium is responsible for providing a corporate guarantee. These guarantees may be unlimited or capped; in the latter case, the relevant contract provisions allow that all members of the consortium submit corporate guarantees that, in the aggregate, satisfy the minimum financial requirements.

Under the rules issued by Agency for Safety, Energy and Environment operators must maintain and register insurance policies that comply with the minimum requirements established in the regulation.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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

Under the Mexican Constitution, the performance of activities under E&P contracts and entitlements must include a minimum national content percentage. Pursuant to article 46 of the Hydrocarbons Law, exploration and production activities shall at least, in the aggregate and on average, reach a national content percentage of 35 per cent. This goal, however, excludes deepwater and ultra-deepwater activities.

The Secretariat of the Economy (SE) is responsible for establishing the methodology to measure national content and to supervise the compliance with the minimum percentages established in each E&P contract or entitlement. If the SE determines that an operator has breached its minimum national content obligations, it will instruct the National Hydrocarbons Commission (CNH) to enforce the relevant remedies under E&P contracts or entitlements. If an operator does not reach the minimum national content percentage or otherwise breaches its obligations related to national content, liquidated damages that are equal to 15 per cent of the value in breach of the minimum percentage accrue.

In addition, E&P contracts establish an obligation to prefer services provided by local companies, as well as goods produced locally. Also, operators must complete training and technology transfer programmes approved by the CNH within the relevant exploration, appraisal or development plan.

Social programmes

26 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

E&P contracts and entitlements do not establish any type of social programme payment obligations but these could be established as part of other obligations under the Hydrocarbons Law and applicable regulations. For instance, all operators are required to submit to the Ministry of Energy (SENER) a social impact assessment whereby the operator identifies, characterises, predicts and evaluates the social impact of the relevant project. This assessment should also contain the mitigation measures and social management plans.

In accordance with a regulation issued by SENER in 2018, social management shall include the actions and human and financial resources that the operator shall implement in matters of social communication, participation and investment, with the goal of promoting the sustainability of a project. These investments include any social investment for the betterment of any communities located in the direct area of influence as well as the core area of a project.

In addition, in the case of onshore developments and pipelines, the relevant operator or developer may agree to in-kind payments of the consideration of land use and surface occupation agreements, or other types of payments and investment in community projects located in the area of influence of the relevant projects.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 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 general rule is yes. The CNH, as technical administrator of exploration and extraction contracts and counterparty to all licences or PSCs, is required to consent to any transfer of interest in a licence or PSC or a change of control that results in a change of control of the consortium or individual company.

If the relevant transfer or change in control triggers the approval process, the applicant must comply with National Hydrocarbons Commission (CNH) guidelines establishing the requirements and procedure to undertake joint ventures and partnerships where an assignment of corporate and managerial control or the control of operations occurs. Under this regulation, the approval may take up to 32 business days, and longer if additional information is required from the applicant.

The applicant must submit general information on the transferee, technical and financial documentation and other legal documents such as powers of attorney. If the transferee was previously pre-qualified for a bid process held by the government, it is not required to evidence these credentials again. The cost of this authorisation ranges from US$3,000 to US$25,000 depending on whether the transferee was previously pre-qualified by the CNH as operator or non-operator, as the case may be.

There are no pre-emptive rights for the government.

Approval to change operator

28 Is government consent required for a change of operator?

Yes. Under article 15 of the Hydrocarbons Law, prior consent from the CNH is required to change operator. The CNH has issued specific regulations governing changes in control and changes in operatorship.

Given recent secondary market activity, there are multiple precedents on how CNH rules on requests for consent in changes of control and changes in operatorship.

Even in cases where no change of control or change in operatorship will occur under the relevant E&P contract or applicable regulation, any change to the participating interests will effectively require the authorisation of the CNH to amend the relevant E&P contract.

Not all E&P contracts contain the same change of control and assignment of participating interests clauses. As a result, not all change of control or change in operatorship requests for consent are handled the same by the governing body of the CNH.

Transfer fees

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

Other than the filing fees related to a request of consent to change the operator or change in control, transfer of oil assets does not create any special or specific fee or tax. However, Mexican tax residents are subject to the applicable income taxes.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

In the case of E&P contracts under a licence, title to all facilities and equipment shall remain with the operator. At the termination of the E&P contract for any reason (including administrative rescission), however, title to any real estate materials (essentially any facilities and equipment attached to the ground) shall pass to the state free of any liens, charges, payment or indemnification. Any real estate materials rendering services to more than one contract or entitlement area are excluded from this transfer obligation until the relevant services are completed.

As for PSCs, title to all facilities and equipment shall remain with the operator during the effective term of the E&P contract. At the termination of the contract for any reason (including administrative rescission), all materials (not only real estate materials like in the case of licences) shall pass to the state free of any liens, charges, payment or indemnification. Any materials (including real estate materials), leased equipment and facilities and any other materials rendering services to more than one contract or entitlement area are excluded from this transfer obligation until the relevant services are completed.

In the case of transportation, except for gathering lines within a block (in which case they are subject to the above rules), title to the pipelines and other facilities and equipment do not necessarily have to vest in the relevant permit holder. Title to the facilities and equipment may be held by a lender or other creditors. The permit holder will, however, typically own these assets subject to multiple security interests and other liens.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 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 applicable legislation is found in the Hydrocarbons Law, the Law of the National Agency on Industrial Safety and Environmental Protection of the Hydrocarbons Sector (ASEA Law), the General Law of Ecological Equilibrium and Environmental Protection and multiple general administrative provisions issued by the the Agency for Safety, Energy and Environment (ASEA) on the subject matter, including the Guidelines on matters of Industrial Safety, Operational Safety and Environmental Protection to undertake Hydrocarbons Reconnaissance and Superficial Exploration and Exploration and Extraction activities, and the Guidelines on matters of Industrial Safety, Operational Safety, and Environmental Protection for Land Transportation through Pipelines of Oil, Oil Products and Petrochemicals.

As a general rule, operators and pipeline companies must complete full decommissioning and abandonment of any oil and gas facilities. Abandonment is generally defined as withdrawal and decommissioning activities for all equipment, including definitive plugging of wells, and remediation of environmental damage in accordance with the terms of the relevant petroleum granting instrument, applicable laws, the HSE management system and the best practices of the industry.

In the case of exploration and production, the operator is responsible for carrying out all the activities related to the abandonment of a contract or entitlement area (block). Any plans submitted for the

approval of the National Hydrocarbons Commission must contain a chapter on abandonment of the relevant project. The operator is liable for any cost and expense related to abandonment including but not limited to: (i) environmental restoration and remediation (which may entail environmental compensation if the former is not possible); (ii) decommissioning of all facilities and equipment; and (iii) handover of the relevant area free of any debris or waste.

In the case of pipelines, and exploration and production activities, the relevant operator must submit an abandonment programme before ASEA for approval. In the case of E&P, however, a third-party technical opinion on the viability and compliance of the programme is also required.

In the case of E&P contracts (particularly PSCs), no reserves or provisions will be deemed recoverable costs unless they are contemplated as abandonment costs pursuant to the exploration or development plan and they have been deposited in the abandonment trust.

During 2020, ASEA is expected to issue specific regulation on closing, decommissioning and abandonment of oil and gas projects in Mexico.

Security deposits for decommissioning

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

Yes. Security for decommissioning takes the form of an abandonment trust. Depending on the stage of the relevant E&P contract, the abandonment trust will be created as of the approval of the development plan by the CNH or at some other time in the case of exploration projects. Abandonment trusts shall be opened with a Mexican financial institution and they are funded on an annual basis in accordance with a formula established in each E&P contract. The formula considers estimated production for a year, remaining proven reserves, the remaining amount of abandonment costs and the interest accrued by the abandonment trust.

Funds from the abandonment trust may only be used for decommissioning and abandonment activities. If there are insufficient funds to cover all decommissioning and abandonment activities, the operator remains liable for any additional costs.

TRANSPORTATION

Regulation

33 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?

Transportation of crude oil outside of a contract area (block's perimeter) and crude oil products by whatever means is regulated through permits granted by the Energy Regulatory Commission. In the case of pipelines, the regulation consists in open access obligations, approval of terms to provide service, maximum rates and other matters associated with open seasons, and electronic bulletins for users and potential users. In the case of barges, tankers, rail or trucks regulation is limited to a permit and HSE rules established by the Agency for Safety, Energy and Environment (including mandatory insurance).

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Cost recovery is regulated by the Hydrocarbons Revenue Law, its Regulations, the guidelines issued by the Secretariat of Finance and Public Credit (SHCP), and the terms of the E&P contract. Any cost, expense and investment recognised as an eligible cost under the Cost Guidelines (see below) may be recovered by the operator. For each bid process, the SHCP establishes a cost recovery percentage; the cost recovery limit in a given month is obtained by multiplying the cost recovery percentage by the contract value of the relevant hydrocarbon. Any cost, expense or investment not paid to the operator in a given period or month as a result of the cost recovery limit may be carried over to subsequent months.

Cost recovery is triggered once oil production commences.

Article 19 of the Hydrocarbons Revenue Law establishes a list of concepts that may not be deducted for purposes of cost recovery; these include financial costs, donations, costs incurred by the negligence or fraud of the operator, land-related payments (eg, easements, rights of way, temporary or permanent occupation, leases, purchases of land and other compensations paid to landowners), legal costs arising from arbitration or disputes, commissions paid to brokers, payment of royalties, rental fees (contractual fee for the exploration phase), as well as other payments to the government.

The guidelines on the preparation and submission of costs, expenses and investments; procurement of goods and services in contracts and entitlements; the accounting and financial verification of contracts, and the update of royalties in contracts and the hydrocarbons extraction fee, issued by the SHCP (Cost Guidelines) further regulate the cost recovery mechanism under PSCs.

The Cost Guidelines establish eligible costs and recoverable costs. An eligible cost is any cost strictly necessary to undertake petroleum activities but specifically excluded are those that: (i) are not strictly necessary under the E&P contract, (ii) are not in compliance with the Cost Guidelines or were incurred before the effective date of the E&P contract or after its termination, (iii) are incurred after the metering point, or (iv) are not properly backed by documents or are not registered in the operation account. In turn, recoverable costs are any eligible costs that are included in the relevant budget and work plans approved by the National Hydrocarbons Commission and which are effectively paid.

The Cost Guidelines expand on the items and concepts that are not eligible for cost recovery. These expanded list includes any costs that, notwithstanding included in a budget, they elevate the budget in excess of 5 per cent or 10 per cent above the item or activity in the relevant accounts of an approved budget, payments to holders of mining concessions, costs related to trading or transportation of oil, natural gas or condensates beyond the metering point, penalties or sanctions and use of independent experts, among other things.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

A single agency is responsible for the regulation of the oil and gas sector: the Agency for Safety, Energy and Environment (ASEA). If a project qualifies as an oil and gas project, ASEA has jurisdiction over the approval of all permits and authorisations related to environmental protection and industrial and operational safety.

HSE requirements go from filing an environmental impact statement to regular filings of incidents and accidents at facilities. Any implementation of an oil-related project requires the prior registration of a management system (SASISOPA) and the authorisation from ASEA with respect to the implementation of the SASISOPA for a particular project. In addition, there are rules around minimum insurance requirements; these rules include the type and amount of minimum coverage.

ASEA has also published regulations around:

- prevention and control of methane emissions;
- comprehensive management of waste requiring special handling;
- reporting incidents and accidents;
- root cause investigations for accidents and incidents; and
- preparation, implementation and authorisation of SASISOPA.

In accordance with the ASEA Law, ASEA has broad authority, among other things:

- to order audits and verifications;
- to conduct on-site inspection and supervision visits;
- to summon agents of regulated companies to answer questions;
- to carry out inquiries and investigations on incidents and accidents;
- to order safety and arrest measures; and
- to suspend or revoke permits, authorisations and licences on environmental matters.

Also, in the case of environmental felonies, ASEA files criminal complaints before the Environmental Federal Prosecution Agency.

Non-compliance with environmental regulation may carry fines of up to US$30 million. This would be in addition to and not in lieu of any civil, environmental or criminal liability that arises under separate bodies of law and theories of liability.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

There are no special labour laws or rules applicable to the oil industry, but general rules of Mexican labour law apply, which generally require 90 per cent of the labour force to be Mexican. Exceptions apply where the degree of specialisation is high or local capabilities are absent. Visa obtainment depends on the country of origin, as free trade agreements contemplate facilitated procedures for citizens of certain countries.

Mexican law prohibits discrimination based on sex, gender, orientation and disabilities, but this is not specific to the oil and gas industry.

TAXATION

Tax regimes

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

The Secretariat of Finance and Public Credit wields tax authority in Mexico, which is enforced through the Tax Revenue Service (SAT).

As a general rule, irrespective of any payments due under E&P contracts or entitlements, operators and other industry participants are subject to the Income Tax Law (LISR) and other general tax provisions. The income tax rate on legal entities is currently at 30 per cent and there are no local or municipal income taxes. However, operators under E&P contracts may apply certain deductions that are different to those established under LISR for matters such as exploration, secondary and enhanced recovery, development of oil reservoirs and development of other infrastructure necessary to undertake upstream activities such as pipelines, tanks and other facilities.

In addition to the general income tax, in the case of upstream activities, operators shall pay a tax on hydrocarbons exploration and extraction activities, which is paid considering the surface of the relevant block and whether the block or a part thereof is subject to an exploratory or an extraction phase.

Production and import of petrol and diesel (fossil and non-fossil) as well as other oil products are subject to a special tax over production and services.

COMMODITY PRICE CONTROLS

Crude oil mining

38 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.

COMPETITION

Competition enforcers

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

The Federal Economic Competition Commission (COFECE) under the Federal Law of Economic Competition (LFCE). COFECE is a constitutionally autonomous agency which means that the Executive Branch does not appoint its commissioners, who may only be removed for serious causes.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

Unlike other jurisdictions where monopolistic practices are divided in agreements and unilateral practices (eg, abuse of dominant position), the LFCE follows US antitrust law by defining certain per se prohibited horizontal practices (eg, absolute monopolistic practices) and other relative monopolistic practices, which are vertical agreements and unilateral practices whose anticompetitive nature is determined under a 'rule of reason' analysis.

COFECE is vested with sufficient powers and authority to prosecute and punish any anticompetitive or manipulative conduct aimed at or having the effect of damaging or impeding competition in the production, processing, distribution and marketing of products or services in the relevant market, provided the party undertaking such conduct is proven to have substantial power over the relevant market.

As part of its scope of authority, COFECE may require economic agents to cease any anticompetitive practice and even order the divestment of assets.

When dealing with proposed joint ventures or acquisitions, the LFCE requires that the relevant economic agents file for merger control clearance before COFECE if the transaction exceeds certain value thresholds.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

The Mexican state owns all seismic data. Operators and other industry players may have access to and use that data through exclusive or non-exclusive licence agreements executed with the National Hydrocarbons Commission (CNH). These licences may or may not confer the right to the commercial exploitation of that data. The CNH manages all data through the National Centre for Hydrocarbons Information (CNIH). Operators and seismic acquisition companies have an obligation to report all data to the CNH.

The CNH regulates the gathering, use and access to seismic data through the Guidelines for the Use and Delivery of Data to the National Centre of Hydrocarbons Information (issued in August 2019).

INTERNATIONAL

Treaties

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

As a general principle established in the Mexican Constitution, international treaties are deemed 'supreme law of the land' in Mexico. There are many international treaties to which Mexico is a signatory that impact the regulatory regime for exploration and production activities, either directly or indirectly. Depending on where activities are carried out (onshore or offshore), the regulatory impact of the treaties differs – in offshore activities, Mexico has assumed international commitments on environmental matters (eg, International Convention on Civil Liability for Oil Pollution Damage, International Convention for the Safety of the Life at Sea and International Convention for the Prevention of Pollution from Ships), shared oil reservoirs (Agreement between Mexico and the United States related to Trans-border Reservoirs of Hydrocarbons in the Gulf of Mexico), and sea law (UN Convention on the Law of the Sea).

With respect to foreign investment, Mexico is now considered one of the most open economies in the world. The magnitude of such commercial openness can be measured by the twelve large free trade agreements (FTAs) that Mexico has ratified with over 44 countries, and the multiple bilateral investment treaties (BITs) to which Mexico is a party. Moreover, Mexico has recently signed (and ratified) the International Convention for Settlement of Investment Disputes (the ICSID Convention) and is a member of the World Trade Organization.

Foreign investment plays a major role in the Mexican economy and its development, representing around 20 per cent of Mexico's economic activity depending on foreign markets, and foreign investment is responsible for more than 40 per cent of Mexico's gross domestic product. Perhaps because of this, despite not being a signatory party of the ICSID Convention until recently, Mexico has been one of the most active respondent states in ISDS procedures thus far (along with Canada), many of them deriving from protections under the North America Free Trade Agreement (NAFTA).

Mexico has executed and ratified more than 42 BITs with countries around the world and has recently ratified its adherence to the ICSID Convention. The protections granted to foreign investors in Mexico under such BITs are usually the same – for example, fair and equitable treatment, national treatment, most-favoured nation clause, performance requirements and expropriation (whether direct or indirect), except for 12 BITs that contain an umbrella clause to cover all obligations assumed by Mexican government towards the foreign investor, representing a higher standard of protection with respect to the protections usually included in the other BITs, since it would also cover obligations assumed by the Mexican government in contractual or other legal instruments (including mining concessions).

The international commercial obligations assumed by Mexico provide foreign investors a number of benefits and remedies intended to secure the legal certainty of their investments in Mexico. Accordingly, while there may be risks associated to investing in Mexico (in our opinion, mostly related to security issues and local permitting), we consider that depending on the specific matter and to the extent governmental authorities are involved, such risks may be covered by the compensation measures and dispute settlement procedures contemplated in the international commercial treaties adopted by Mexico.

In this regard, the requirements established in such international treaties to have access to these sorts of benefits are normally wide enough to allow any form of foreign participation (directly or through a Mexican vehicle) being able to resort to such remedies. In any case, we recommend recording all activities developed in Mexico, since such documentary evidence may be required in any arbitration procedure.

Despite the several FTAs signed and ratified by Mexico, by far the most important given its scope in terms of trade volume and legal obligations is NAFTA, which may likely be replaced by the United States, Mexico and Canada Agreement (USMCA). Chapter 14 of the USMCA contemplates the exit of Canada from the ISDS system included in the USMCA and also reduces the protections available to US investors in Mexico, as the potential grounds for an investor–state claim are reduced. A potential concern is the limitation on the ability to submit claims for indirect or 'creeping' expropriation, which are expressly carved out from the protections that can be subject to an ISDS arbitration procedure. However, there is another scheme of protections for rights granted in government contracts in a 'covered sector', which includes the oil and gas industry.

Mexico is also a party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP). The TPP has been already executed and ratified by Mexico (although its entry into force depends on the ratification by at least half of the signatories of the TPP) and also contains a specific chapter of protection of investments.

With respect to commercial transactions, Mexico is a party to all of the most important international treaties concerning recognition and enforcement of arbitral awards, such as the New York Convention of 1958, the Panama Convention of 1975 and the Montevideo Convention of 1979. Moreover, Mexican arbitration law has substantially adopted the model law on international commercial arbitration of the United Nations Commission on International Trade Law. Likewise, Mexican courts are experienced in recognition and enforcement of international arbitral awards; so an international award rendered in any foreign country shall be recognised and enforced in Mexico without the need to review the merits, to the extent such award complies with the applicable international treaty.

Foreign ownership

43 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?

Other than the supply (not to be confused with trading) of fuels to the aviation and maritime industry, there are no foreign investment restrictions in the Mexican oil industry to carry out upstream, midstream and downstream activities. Foreign investors require a local subsidiary incorporated under the laws of Mexico in order to be eligible to obtain a permit from the Energy Regulatory Commission or execute an E&P contract with the Mexican government through the National Hydrocarbons Commission. For upstream, the Mexican company must have an exclusive corporate purpose.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

With respect to crude oil, there are no special rules that apply to cross-border sales or any volumetric supply obligations for the local market. The Ministry of Energy (SENER), however, is responsible for granting export and import permits of crude oil – these permits may be granted for periods of one or 20 years. The Hydrocarbons Law grants SENER broad regulatory powers to amend the regulations on import and export permits; therefore, the requirements to apply for these permits and their effective term may vary.

Moreover, SENER may establish public policy relating to storage levels and guarantee of supply of crude oil and oil products; this policy, however, both in the context of crude oil and oil products applies in the context of the midstream market and is not applicable to producers of crude oil. In December 2017, SENER issued the public policy on minimum storage of oil products. This policy was amended in December 2019, to establish that as of 1 July 2020, holders of trading and distribution permits of oil products that supply end users and service stations must maintain a minimum inventory of oil products in Mexico. This minimum inventory is calculated by taking into account average sales of the last year. Moreover, the amendments relaxed certain rules on the location of inventories but removed the exception to this obligation for terminals coming online on or before 31 December 2021; all traders and distributors are bound by the minimum inventory (CSO) policy as of 1 July 2020.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

Earlier this year, each of the governments of Mexico, the United States and Canada ratified and approved the United States-Mexico-Canada free trade agreement.

The current federal administration continued the suspension of oil block auctions (including farmouts with Pemex), and this is expected to last for the foreseeable future.

In late 2019, the operator of an exploration and production (E&P) contract awarded in Round 1.2 saw first oil. Other E&P contracts from that round are expected to see first oil in late 2020 and the beginning of 2021. These projects are located in shallow waters of the Gulf of Mexico.

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Pemex and the consortium holding rights to a contract awarded in Round 1.1 commenced a unitisation process with the Ministry of Energy (SENER) in connection with the 'Zama' discovery. Although a preliminary unit agreement was approved by SENER, Pemex and the adjoining operator have yet to agree on the unit operator if the discovery will be developed as a unit. This case has raised interesting questions regarding SENER's and CNH's authority to appoint a unit operator if the involved parties are unable to reach an agreement.

In mid-2019 Pemex and the government announced a plan to launch an international bid process to award comprehensive exploration and extraction contracts (CSIEE) during 2020. Along with this plan, the federal government announced an energy-investment plan in which private investment will be welcomed and expected. This plan is yet to be announced.

The aforementioned CSIEE programme would mimic the early 2010s' incentivised contracts programme, whereby oil service companies were paid on a fee-per-barrel basis. On this occasion, however, Pemex wishes the service company to more of the exploration and drilling risk in exchange for a more attractive fee.

In addition to amendments to existing oil and gas regulation, over the past couple of months (particularly during 2019) the following are most relevant regulatory developments:

- CNH issued new regulations (repealing and replacing old regulations) on exploration and development for extraction plan and the use and delivery of geological and geophysical data to the National Centre for Hydrocarbons Information;
- ASEA issued a new regulation on emergency response protocols and an official standard on the handling of special management waste and hazardous waste in the oil and gas sector, and it intends to issue regulations on decommissioning and abandonment of oil and gas projects;
- SENER amended the minimum refined products inventory policy (CSO) and is expected to issue new regulation on landowners' compensation based on oil and gas production; and
- the Federal Labour Law was amended on May 2019 on collective/union issues, and to transfer jurisdiction over labour disputes to the Federal Judiciary.

Storage of crude oil and products will necessarily continue to be an area of continued interest and participation by foreign investment.

The economic slowdown and global decrease in oil demand generated by the covid-19 pandemic may force the Mexican government to rethink its short-term strategy for oil and gas exploration and production.

In a low-price scenario, not all fields operated by Pemex are profitable. To maintain production to its maximum allowable (as recently agreed with OPEC+) the Mexican government may look to relaunch oil and gas block auctions as a source of much-needed revenue.

In April 2020, the federal government announced further tax incentives for Pemex in an attempt to make its E&P operations (under entitlements only) profitable in a low oil prices scenario.

Myanmar

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GENERAL

Key commercial aspects

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 Bama Oil Company discovered the onshore Yenangyaung oil field in 1887. The oil and gas sector was nationalised in 1962.

At present, there are 17 onshore blocks and three main offshore blocks in production. As of December 2019, output of oil and condensate from these fields was 7,900 bbl/d. The offshore Yadana (Total, Chevron and PTTEP) and Yetagun (Petronas, Nippon Oil and PTTEP) natural gas projects began production in 1998 and 2000 respectively under gas sales contracts to the Thai state oil company PTT. In December 2019, Yadana produced natural gas of approximately 860 Mcfd. In December 2019, Yetagun produced an average of 1,751 bbl/d of condensate together with natural gas of around 80 Mmcfd for processing at Thanlyin Oil Refinery. The offshore Shwe (Posco Daewoo, plus four partners including MOGE) natural gas project commenced production and sales in 2013 to China National Petroleum Corporation (CNPC) and MOGE and produced natural gas of approximately 600 Mmcfd in December 2019. The offshore Zawtika (PTTEP and MOGE) commenced production and sales in March 2014 to PTT and produced around 280 Mmfcsd of natural gas in December 2019.

MOGE is reported to be planning to begin the next bidding round, but no estimated date has been announced. The round may include 18 onshore and 15 offshore blocks. Possible revisions to standard PSC contract terms are under consideration. See Myanmar Oil and Gas Services Society's 'Challenges of Myanmar PSC's in Downtime', 25-26 January 2018.

Energy mix

2 | What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

At present, Myanmar's energy needs are met by oil, gas, hydro and renewable and solar projects. The country's oil production is approximately 10,902 bbl/d. However, the present daily oil consumption rate is more than 30,000 bbl/d. Myanmar is, by consumption, a net importer of oil.

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.

Government policy

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

There are many laws regarding oil-related activities that date back to 1918; these are largely based on the British legal codes of pre-independence Indian statutes. The Myanmar Energy Master Plan was issued by the National Energy Management Committee in December 2015.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

Certain information, including names of contractors and maps of exploration blocks, are available on the Ministry of Electricity and Energy (formerly Ministry of Energy) website at www.moee.gov.mm. Oilfield ownership or operatorship, even if listed in a register for internal government records, it is not publicly available.

Legal system

5 | Describe the general legal system in your country.

Myanmar has an English 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 common law regime. Following the 2015 general election, re-establishing the rule of law became a priority, aided by the assistance of numerous international institutions.

Myanmar is a party to the United Nations 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. More productive measures are expected by the current civilian government.

REGULATION OVERVIEW

Legal framework for oil regulation

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

Current legislation governing oil and gas in Myanmar includes 10 principal laws:

- the Oilfields Act 1918;
- the Oilfield Rules 1936;
- the Petroleum Rules 1987;
- the Essential Supplies and Services Law (Law No. 13/2012;
- the Oilfields (Labour and Welfare) Act 1951;

- the Petroleum Resources (Development Regulation) Act 1957 (subject to be repealed by the new Law Relating to Petroleum Exploration, Drilling and Production);
- the Law Amending the Petroleum Resources (Development Regulation) Act 1969;
- the Myanmar Petroleum Concession Rules 1962 and Notification No. 615/2015;
- the Petroleum and Petroleum Products Law 2017;
- the Importing, Storage, Transporting and Distribution of Petroleum and Petroleum Products, Notification No. 100/202013 of Ministry of Energy.

These laws are mostly based on the British legal codes from pre-independence Indian statutes. Although the terms and conditions of production-sharing contracts (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. Environmental regulations have become part of the legal framework regulating oil activities.

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 Myanmar Investment Law of 2016 (MIL) (formerly the Foreign Investment Law of 2012 (FIL), repealed by MIL)), Myanmar Investment Rules and Myanmar Investment Commission (MIC) Notification (under which permits are granted by MIC to approve terms and conditions of draft PSCs).

The old petroleum laws mainly deal 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), improvement of marginal recovery agreements (IPRs), 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.

See the new Companies Law 2017, which came into force on 1 August 2018, which repealed the Company Law 1914. See also the draft new Law Relating to Petroleum Exploration, Drilling and Production issued on 13 August 2019.

Expropriation of licensee interest

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

MIL 2016 includes a prohibition against nationalisation.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

Yes.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The Ministry of Electricity and Energy (MoEE) is the primary government agency responsible for the oil and gas sector. Entities within the MoEE that are influential in energy projects are:

- the Oil and Gas Planning Department (OGPD) (formerly Energy Planning Department), 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 MoEE and MIC also have some regulatory roles. If there is a breach or default, the PSC may be terminated.

Government statistics

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

The Ministry of Electricity and Energy (MoEE) maintains some statistics on oil production, which are presented at workshops from time to time. Some statistics can be found on its website.

The MoEE issued the 'Myanmar Energy Statistics 2019' on 11 March 2019, which is the result of a four-year development project, and fills a gap in the statistical knowledge of Myanmar's energy and electricity sectors.

The Myanmar Energy Monitor is the sector's leading source of information, research and analysis (see www.energy.frontiermyanmar.com).

NATURAL RESOURCES

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

The Myanmar Constitution of 2008 stipulates that the state is the ultimate owner of every natural resource, whether found above or below the ground, above or below the water, or in the atmosphere.

Similar to other former British colonies, the land tenure system in Myanmar recognises freehold and leasehold titles. Such a 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, Resettlement and Rehabilitation Law). 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 Immovable Property Restrictions Law 1987). In September 2011, a notification was passed that a company operating under a FIL permit may be granted a 'right to use' government-owned land or private land, but that right does not automatically include the right to sublease the land, so applicants under MIL should include their specific requirements for the land in their permit application (known as the proposal) before MIC.

Exploration and production – general

12 | 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 is conducted both on- and offshore. No areas within stated exploration blocks have been designated off limits to exploration and production.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

The MoEE is the primary government agency responsible for the oil and gas sector. In most cases since 2011, the awarding of blocks has 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. On 7 May 2015, MOGE announced that another bidding round would not begin until 2016 at the earliest but did not disclose how many onshore or offshore blocks it would make available.

For updates, see www.moee.gov.mm, and the terms of the next bidding round expected in the near future.

Government participation

14 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 OGPD 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 5Tcf).

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.

Royalties and tax stabilisation

15 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are 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 income tax, contractors are liable for capital gains tax, special goods tax and bonuses. Prior to 2013, mention of tax stabilisation was relegated to a side letter signed between MOGE and contractors. There is a general stabilisation provision in PSCs in the 2013 rounds (section 27.7).

Licence duration

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

For onshore blocks, the duration is:

- 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 – six to 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.

Extent of offshore regulation

17 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 1982.

Onshore offshore regimes

18 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-water offshore blocks and deep-water 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 its costs;
- 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$500,000 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 Myanmar;
- arbitration – Myanmar Arbitration Act 1944 and Arbitration Law, 14 January 2016;
- 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 a one-year extension may be granted at the contractor's option. The production split ranges from 60 per cent to 90 or 85 per cent (crude oil) and 65 or 60 per cent to 90 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 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 the UN Commission on International Trade Law 1966 (UNCITRAL) rules with Singapore as the venue.

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 a one-year extension to the exploration period may be granted at the contractor's option (see 'Shallow-water offshore blocks' above). The production split ranges from 60 or 55 per cent to 85 or 80 per cent (crude oil) and 60 or 55 per cent to 90 or 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 rules with Singapore as the venue.

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.

Authorised E&P entities

19 | 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 (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 organisation. The energy plan recently announced by MOGE includes a push to increase and promote private participation in Myanmar's oil and gas sector.

In the 2013, during tenders for O&G blocks, winning bidders were obliged to register a local subsidiary or branch office within the six-month preparatory period.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

In accordance with the provisions of the PSC, MOGE shall have, and be responsible for, the management of the petroleum operation. Operatorship can be revoked.

Joint ventures

21 | What is the legal regime for joint ventures?

Previously, offshore oil exploration and production could be undertaken 100 per cent by a foreign-owned contractor. However, in 2011, an unwritten MoEE policy required that the contractor includes a local joint venture partner holding a minority interest. A list of possible joint venture partners was available. There was 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 MoEE conducted two new bidding rounds in 2013.

Reservoir unitisation

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

At present, there are no provisions concerning unitisation.

Licensee liability

23 | 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.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? 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, the OGPD introduced a requirement for a bank guarantee of 10 per cent of the initial minimum work commitment.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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

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.

Social programmes

26 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

As a business entity operating under an MIC permit, a licensee, lessee or contractor is obliged to pay 2 per cent of net income for corporate social responsibility.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 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.

Approval to change operator

28 Is government consent required for a change of operator?

MOGE and MIC consent is required for a change of operator.

Transfer fees

29 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 – less than US$100 million; MOGE share – 40 per cent;
- profit – US$100 million to US$150 million; MOGE share – 45 per cent; and
- profit – more than US$150 million; MOGE share – 50 per cent.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

MOGE retains title to pipeline assets and grants the contractor custody and the exclusive right to the use of pipeline. MOGE may put the pipeline and other infrastructure to other uses with the contractor's permission if it will not interfere with the contractor's operations. On termination, all equipment purchased by the contractor and brought into Myanmar for the purpose of petroleum operations shall be passed to MOGE.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 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 in section 17.2 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.

Security deposits for decommissioning

32 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

Regulation

33 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 MoEE and the Ministry of Transportation and Communication (formerly known as the Ministry of Transportation) are the regulators of transportation of crude oil. Approval from the relevant state or regional government may also be required.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

A contractor shall recover all costs and expenses in accordance with the accounting procedure of the PSC in respect of all designated petroleum operations up to a maximum of 50 per cent of all available petroleum from the contract area; provided, however, that the costs and expenses of development and production operations in respect of any development and production area shall be recovered only from available petroleum produced from the development and production area.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? 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 were not required for any projects, governmental or private. A number of laws include short provisions prohibiting acts that adversely impact the environment.

Environmental protection generally falls under the aegis of the National Commission for Environmental Affairs (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, which leaves many gaps in the regulatory regime.

The Environmental Conservation Law 2012 was enacted in March 2012. Rules to implement the new Law were announced in 2014. The Environmental Impact Assessment Procedure was passed in 2015 and National Environmental Quality Emission Guideline (2015) and the Environmental Impact Assessment Regulations (2015) were passed in 2015. To date, there is no new additional regulation relating to environmental impact.

One of the leading precedents in Myanmar for environmental and social programmes is the 63km long Yadana-Yetagun pipeline corridor through which three natural gas pipelines from Yadana, Yetagun and Zawtika transit to the Thai border for delivery of natural gas to PTT (see www.cdain.com and www.chevron.com/globalissues/humanrights/myanmar).

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The Factories Act and the Oilfields (Labour and Welfare) Act 1951 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.

A company may also use foreign labour for part of its workforce. A company registered under 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. MIL does not mention the percentage requirement. An investor can appoint any citizen as senior manager, technical and operational expert and adviser and replace the positions of management, technical and operational experts and advisers with local labour after providing the capacity building programmes. The visa requirement for foreign labour is filing for a stay permit at DICA with the prescribed documents and forms. A foreign employee must report and file for a stay permit at DICA within seven days of entering Myanmar.

On 15 March 2019, Myanmar enacted a new Occupational Safety and Health Law (Law No. 8/2019), which applies to oil and gas business under section 4(i) of that law. However, this law has not yet been fully implemented.

There are no anti-discrimination requirements. However, additional labour laws are in the pipeline that may include such provisions.

TAXATION

Tax regimes

37 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. Only promoted business activites mentioned under MIC Notification 13//2017 are entitled to apply for income tax holidays. Depending on the investment zone, the CIT holiday period can be seven years (Zone 1), five years (Zone 2), and three years (Zone 3).

Depreciation may be deducted in calculating a company's income tax liability at the following rates, subject to the applicable cost recovery limit:

- category – plant, machinery and pipelines; depreciation rate – 5 per cent;
- category – oil rigs, survey equipment; depreciation rate – 10 per cent; and
- category – shaft drilling equipment; depreciation rate – 20 per cent.

Under the 2018-19 Union Tax Law, commercial tax shall be levied at 5 per cent on exporting crude oil and special goods tax shall be levied at 8 per cent on exporting natural gas. Under 2019-2020 Union Tax Law, there is no special goods tax on natural gas.

Customs duties vary depending on the customs classification of the goods. Companies with projects approved under 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 and 6 kyat to US$1. The government also issued foreign exchange certificates (FECs) that were supposed to be equivalent in value to US$1.

In consultation with the International Monetary Fund, 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 one of the country's 24 private banks to offer foreign currency accounts, seven of which can be used to remit foreign exchange abroad. Some restrictions remain on the opening of 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, 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 MIL 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 Planning and Finance Notification No. 51/2017 of 22 May 2017, 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 – 15 per cent;
- royalties – 10 per cent on payments to residents, 15 per cent on payments to non-resident foreign nationals; and
- payments for the purchase of goods and services in the country – 2 per cent on payments to residents, 2.5 per cent on payments to non-resident foreign nationals.

Myanmar is, at present, party to eight double tax treaties with India, Laos, Malaysia, Singapore, South Korea, Thailand, the United Kingdom and Vietnam. The treaties with Bangladesh and Indonesia are pending ratification.

COMMODITY PRICE CONTROLS

Crude oil mining

38 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

Competition enforcers

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

On 24 February 2015, Myanmar enacted the Competition Law, which came into force on 24 February 2017. It provides for the creation of a new regulatory body. The Myanmar Competition Rules were passed by the Ministry of Commerce with Notification No. 50/2017, dated 9 October 2017.

The Myanmar Competition Commission was established on 31 October 2018 under Notification No. 106/2018 of the Ministry of Commerce.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

Until rules are enacted, it is not possible to describe the process or time the process may take.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

We understand that there are two parts for seismic data acquired during the term of the PSC:

- under a service contract, the company holds title of seismic data; and
- under a PSC, MOGE holds the title of the asset.

Therefore, at the time of terminating a PSC, the company has to transfer the data to MOGE. According to PSC stipulations, a company has the right to use the data freely during the term of the PSC. Because it is confidential information under the PSC, without having MOGE consent, the company has no right to disclose this data to any third party. Under the model PSC provision in the secrecy clause, it states that the contractor undertakes to maintain in strictest secrecy and confidence all data and information purchased or acquired from MOGE including during the course of operations in Myanmar. The contractor understands that this undertaking and obligation is a continuing one that will be binding, also to its successors and permitted assigns, until the time when MOGE agrees in writing to release the contractor from its undertakings and obligations. The contractor may disclose data and information to government authorities if required by law and in order to facilitate the conduct of the petroleum operations may also disclose data and information to affiliates, its contractors' consultants and bona fide prospective assignees, provided that the contractor obtains an undertaking by the recipient to maintain the data in strictest secrecy and confidence.

INTERNATIONAL

Treaties

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

During 2012, Australia, Canada, the European Union, the United Kingdom and the United States all relaxed various economic sanctions against Myanmar in light of recent reforms. However, attention must still be paid to the terms of the relaxed sanctions. OFAC authorised new investment by US persons by issuing General Licence No. 17, which includes a prohibition against investments or provision of financial services to persons on the US Treasury Department's Specially Designated Nationals and Blocked Persons List, and the new requirement for periodic reporting.

US citizens investing US$500,000 or more or contracting with MOGE are required to report on a range of policies and procedures with respect to their investments in Myanmar, 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.

See www.state.gov/ and General Licence Nos. 17 and 19 for more information on US sanctions.

Myanmar is a party to the Association of South East Asian Nations (ASEAN) Comprehensive Investment Agreement, which provides investment protection to investors from ASEAN states (including protection against expropriation).

On 15 July 2013, Myanmar formally acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and became the 149th party to the convention.

On July 2014, Myanmar was recognised as a candidate of the Extractive Industry Transparency Initiative, a global standard to promote open and accountable management of natural resources. MOGE came in second-last in a 2019 survey covering transparency of 45 large state-owned enterprises around the world.

Foreign ownership

43 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?

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 from them. 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 22 of the MIL 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-owned 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 the 2013 model PSCs.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

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, Zawtika and Shwe pipelines) under terms of PSCs and GSAs.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

Draft new Law Relating to Petroleum Exploration, Drilling and Production

A draft law concerning exploration, drilling, and production of petroleum was posted in the Myanmar Gazette on 2 October 2018, and a revised draft was issued on 13 August 2019. This draft law would govern the upstream oil and gas sector, and repeal the 1957 Petroleum Resources (Development and Regulation) Act (1957 Act No. 55). A summary of the draft law follows.

The draft law applies to petroleum, including crude oil, condensate and natural gas. It provides for issue of permits to conduct exploration and drilling, and to conduct development and production.

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The draft law provides for the formation of the Petroleum Activity Regulatory Central Committee (the Central Committee).

A contract is to be entered into between the holder of the permit and MOGE to conduct any petroleum activity. The draft provides for five forms of cooperation contracts: production sharing contract; petroleum production development contract; joint venture contract; profit-sharing contract; and other forms of cooperation contract. The draft is silent on what form of contract should be used. Currently, MOGE is signing production sharing contracts with most contractors. The draft law is silent on terms for settlement of disputes and governing law.

The draft law provides for designation of blocks, both onshore and offshore, to be announced by the MoEE with the consent of the Central Committee.

MOGE may conduct petroleum activity on its own, or jointly with local or foreign investors using a cooperation contract.

The MoEE shall supervise and control petroleum contractors, who shall be selected by public tenders, for the benefit of the country.

Royalties are fixed at 12.5 per cent. The MoEE may provide for charges, rent, services fees and other charges.

There is no mention of income taxes and special goods tax.

Rights granted to contractors prior to enactment of this law shall continue in force.

The provisions of the Hand Dug Well Law shall not be applied.

The contractor must establish reserve funds for conservation of the environment, for petroleum activity research and development, for a training fund, and for decommissioning fund.

The MoEE with the approval of the union government may issue work rules in accordance with the nature of the petroleum activity and international petroleum industry practices.

The MoEE with the approval of the union government may issue rules and regulations.

The Central Committee and the MoEE may issue notifications, orders, directives and procedures. The Oil and Gas Planning Department and MOGE may issue orders and directives.

A contractor must obtain a permit from the Myanmar Investment Commission.

Other trends

The sector has presented significant challenges for foreign investors owing to the lack of established guidelines, lack of clear policy framework, shortage of skilled labour, high corruption, lack of transparency in the tender and procurement process and in international contracting, and banking payment issues (www.moee.gov.mm).

There are five LNG iport projects undergoing feasibility studies. On 6 March 2020, the MIC approved the construction of an LNG receiving terminal in the Thilawa port area in Yangon.

The fiscal terms of current PSCs are under review. The PSCs are not feasible given current oil prices. Renegotiating PSCs may include lower profit split for MOGE, a higher cost recovery percentage for contractors, improved terms for deep-water PSCs, and reduced income taxes and royalties.

Covid-19 regulations were announced in 2020 and introduced restrictions on travel, etc.

For updates, see www.moee.gov.mm, www.moge.gov.mm, and the terms of the next bidding round expected in the near future.

Norway

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GENERAL

Key commercial aspects

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 (NCS) since 1971, and on 24 October 2019 the oil and gas industry celebrated the 50th anniversary since the major Ekofisk field was discovered. The base estimate of the Norwegian Petroleum Directorate (NPD) for total proven and unproven petroleum resources on the NCS is about 15.7BSm3oe. Of this volume, only 48 per cent has so far been produced.

At the end of 2019, 87 fields were producing on the NCS, while a total of 95 discoveries could be considered for development in future. A majority of these discoveries are small, and could, if proven to be economical, be developed as satellites to existing fields.

Norwegian oil production reached a peak in 2001, when total liquid production (including natural gas liquids and condensate) reached 3.4Mboe/d. The production then declined until 2013 but, since 2014, has been increasing slightly again. The total production of oil and gas (condensate and natural liquid gas included) reached approximately 214Msm3 in 2019. The NPD estimates that the overall production from the NCS will increase slightly during the period 2020-23. The highest increase in production is expected in 2020, as a consequence of production starting in the major Johan Sverdrup field.

Norway is Europe's second-largest oil producer (after Russia), 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 export value of crude oil and natural gas in 2019 was about 534 billion Norwegian kroner. This amounts to approximately 50 per cent of the total value of Norway's goods exports. The government's total net cash flow from the petroleum industry in 2019, including the dividend from Equinor (formerly Statoil) and various fees, was estimated to approximately 238 billion Norwegian kroner. The surplus created by petroleum income to the state is deposited in the Government Pension Fund. As of 31 December 2019, its total value was approximately 10 trillion Norwegian kroner.

The investment level on the NCS has previously been relatively high. In 2019, investment in oil and gas activities, excluding exploration totalled approximately 150 billion Norwegian kroner, an increase of almost 10 per cent compared to 2018. Investment in the petroleum sector accounts for about 25 per cent of total investment in productive capital in Norway.

Energy mix

2 | What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

Norway has the world's largest per capita hydropower production and a large part of the country's total energy consumption comes from hydropower. One hundred percent of Norway's petroleum consumption is supplied by domestic production. The daily oil consumption is, however, 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.

Government policy

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, health, safety and the environment. There is also a strong focus on increased exploration, both in mature and unexplored areas, and increased oil recovery.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

The Norwegian Petroleum Register is the official publicly available register listing all licences and licensees on the NCS, including information on operatorship, change of company name, etc. 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 1,172 Norwegian kroner. Proof that the fee has been paid should be enclosed with the request for registration. The register is available through the NPD fact pages at www.npd.no.

There is no official register on oilfields but the NPD has made information public on the various oil fields on the NCS. Information provided includes the production licence that forms part of the oilfield, operatorship, etc. For more information see the NPD fact pages at www.npd.no.

Legal system

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 (60);
- 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 restricted. Further, it is recognised that the fact that courts create case law, in particular from the Supreme Court, is 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 general 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 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 generally considered to be unbiased and fair. Domestic judgments and arbitral awards are easily enforced. Norway is party to the Lugano Convention, ensuring the enforcement of judgments in the European Union and European Economic Area. Further, Norway is also a member state of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), ensuring the enforcement of foreign arbitral awards.

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. Moreover, aiding and abetting is subject to the same penalty. Norway has also ratified the following:

- 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

Legal framework for oil regulation

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

The main statute providing the legal framework relevant for petroleum activities on the Norwegian continental shelf (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 adaptations are set out in the appurtenant Petroleum Regulation of 27 June 1997 No. 653. Onshore petroleum activities not governed by the scope of the Petroleum Act are regulated by Onshore Petroleum Act of 4 May 1973 No. 21. To date, no onshore exploration and production activities have been conducted in Norway.

The petroleum activities on the NCS are regulated by a licensing system administered by the Ministry of Petroleum and Energy (MPE) and the Norwegian Petroleum Directorate (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 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'. 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 an 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 daily activities in the joint venture are conducted by the operator on behalf of the licensees. 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 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. 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.

Expropriation of licensee interest

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

No.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

The government may not amend a licence interest after it has been awarded. A licence granted under the Petroleum Act may be revoked by the government in case of serious or repeated violations of the Act, regulations issued by it, stipulated licence terms or conditions or orders issued pursuant to the Act.

In addition, if an application for a licence contains incorrect information, or if information of significance has been withheld, and it must be assumed that the licence would not have been granted had correct or complete information been available, the licence may be revoked in relation to the licensee concerned.

Revocation is also an option if the security that the licensee is obliged to provide pursuant to the Petroleum Act has become significantly weakened or if the company or other association holding the participating interest in the licence is dissolved or enters into debt settlement proceedings or bankruptcy proceedings.

Despite the wide range of alternatives that may qualify for a revocation of a licence or participating interest in a licence, the Norwegian government has so far never exercised this power.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The MPE, together with Ministry of Finance (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 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.

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 Tax Office, which is part of the Norwegian Tax Administration, reports to 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 (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, is responsible for the state's preparedness for oil spills.

Equinor is the largest Norwegian oil company and was partly privatised in 2001 with the Norwegian state as the major shareholder. Equinor competes with all other companies as to the award of licences and has no regulatory power or special privileges related to petroleum activities on the NCS.

Various sanctions may be imposed due to a licensees' breach of the Petroleum Act with appurtenant regulations. Wilful or negligent violations of provisions or decisions issued in or pursuant to the Petroleum Act are punishable by fines or imprisonment. The PSA may issue a legally binding individual order to a company in breach of the HSE Regulations and issue day penalties until all obligations under the order are fulfilled. If needed, owing to a safety concern, the PSA may also require temporary suspension of the petroleum activities etc.

Although not a sanction, the authorities do take into account the experience of a licensee's compliance with the regulatory framework when granting production licences. A poor track record owing to breaches of regulatory requirements may, therefore, be decisive for the authorities' decision not to award any production licence to a company.

Government statistics

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

Norsk Petroleum (www.norskpetroleum.no) maintains and publishes annual statistics for oil production, export and import. In addition, Statistics Norway (www.ssb.no) is responsible for analysing the statistics.

NATURAL RESOURCES

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

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 Ministry of Petroleum and Energy (MPE) is empowered to grant licences to explore, produce and extract petroleum. There is no legal distinction between surface rights and subsurface mineral rights. Title to the extracted oil passes to the licensees once the oil has passed the wellhead.

Exploration and production – general

12 | 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 because of future impact assessments and a subsequent decision by the government to open up new areas for petroleum activities.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

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 Norwegian kroner per calendar year shall be paid in advance of the application. For handling an application for a production licence, a fee of 109,000 Norwegian kroner will apply. For every seismic survey on the Norwegian continental shelf (NCS), a fee amounting to 33,000 Norwegian kroner must be paid.

Offshore areas regarded as mature parts of the NCS are subject to a simplified annual licensing round referred to as 'awards in predefined areas'. Areas not regarded as mature are subject to ordinary licensing rounds, which traditionally have been held every second year. 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.

The applicants are offering specific work programmes for the geographical area governed by the application. The government's offer for the award of a production licence will include a proposed work programme, which may be altered through negotiations between the MPE and the companies being offered participating interests in the production licence. The final work programme is, however, normally identical with the MPE's proposal.

It is a condition under the production licence that the activities under the joint venture are governed by a standard joint operating agreement and a standard accounting agreement, which means that the terms in these agreements are not negotiable.

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 Ministry of Finance. The licensees obtain ownership in the petroleum produced equal to their relative share in the production licence.

Government participation

14 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 Norwegian continental shelf through the state's direct financial interest (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.

Royalties and tax stabilisation

15 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are 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 38,000 Norwegian kroner per km2;
- for the second year the fee is 76,000 Norwegian kroner per km2; and
- 153,000 Norwegian kroner per km2 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.

Licence duration

16 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.

Extent of offshore regulation

17 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 1982 (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 Denmark, Faroe Islands, Iceland, Russia, Sweden and the United Kingdom respectively has been mutually agreed in separate agreements, while the delimitation between Norway and Greenland has been settled by the International Court of Justice.

Onshore offshore regimes

18 | 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?

Exploration and production of petroleum onshore is governed by the Onshore Petroleum Act of 4 May 1973 No. 21. To date, there has been no onshore exploration or production in Norway. The Petroleum Act, which governs offshore petroleum exploration and production, applies to exploration and production of all types of hydrocarbons and provides much more detailed rules than the analogous Onshore Petroleum Act.

Authorised E&P entities

19 | 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 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.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

Licensees and operators on the NCS are highly qualified and the authorities do not normally interfere with the daily work carried out by operators. The authorities may be present with an observer in the management committee meetings and both the MPE and the Norwegian Petroleum Directorate (NPD) receive various licence reports from the operator overseeing that the resource management is conducted in a proper manner.

The authorities' control of the resource management conducted by the operator on behalf of the licensees is more effectively carried out through the participants need to obtain specific consents and approvals to conduct petroleum activities throughout the various phases of the petroleum activities (the step-by-step approach). The MPE and NPD are responsible for granting consents and approvals related to the resource management.

The Petroleum Safety Authority (PSA) is responsible to ensure that petroleum activities conducted by the operator and the other participants comply with the HSE regulatory framework, and the PSA has a risk-based and system-orientated approach focusing on management systems and critical activities as part of their planned audits and random controls.

The operator is dependent on the trust and confidence of both the other licensees and the authorities. The operator may, six months prior to notice, be dismissed by unanimous vote by the management committee, and the MPE may revoke the operatorship when warranted for special reasons. The authorities' right to revoke the operatorship is a 'safety net', but the threshold will typically be met if the company has conducted its task as an operator in a manner that has caused general mistrust by the authorities. If the mistrust is because of a lack of sufficient safety standards, the PSA will be responsible to conduct the assessment and eventually recommend that the MPE should utilise its power to change the operator.

Joint ventures

21 | 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 concluded by the MPE (after receiving input from the Norwegian Oil and Gas Association as the representative of the industry). Amendments and alterations to the JOA or the accounting agreement shall be approved by the MPE. The award of a production licence is conditional upon the companies' signature to the JOA and accounting agreement.

Reservoir unitisation

22 | 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.

Licensee liability

23 | 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.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

According to the Petroleum Act section 10-7, the MPE may decide that a licensee shall provide security for fulfilment of the obligations that the licensee has undertaken in relation to petroleum activities. Traditionally, the MPE has only requested the ultimate parent company of a subsidiary being represented on the NCS to provide a parental guarantee (PCG), meaning that the MPE has not requested stand-alone companies to provide any guarantee with a similar scope as the parental guarantee. The PCG shall be unlimited.

On 20 March 2020 the Norwegian Supreme Court gave an important judgment clarifying the scope of the standard PCG. The question was whether the Norwegian state could utilise the PCG to claim repayment of individual tax refunds (in this instance related to the costs of acquiring seismic data) received unlawfully from the Norwegian state. The Supreme Court held that both the Petroleum Act section 10-7 (authority to require security) and the standard PCG only apply to obligations undertaken in accordance with petroleum activities as a licensee in a production licence, while individual company obligations undertaken outside the scope of a production licence are not governed by the Petroleum Act section 10-7 and the PCG. The seismic data acquired was not related to any production licence held by the company, and the Supreme Court consequently ruled that the Norwegian state's claim was both outside the scope of the legislation and the PCG. It remains to be seen whether the MPE will propose amendments to the Petroleum Act and draft a new standard PCG for new licensees entering the NCS.

There is no general requirement to provide security deposits. A guarantee or equivalent security to ensure fulfilment of all regulatory requirements is, however, required in respect of an application for injection and storage of CO^2 in a subsea reservoir on the NCS. The financial guarantee shall be valid and effective when injection starts.

If a company holding production licences on the NCS is transferring its shares to a new legal entity, the MPE will normally request a standard guarantee from the ultimate parent of the seller to ensure fulfilment of the secondary financial liability for decommissioning costs as outlined in the Petroleum Act section 5-3(3). If the requested standard guarantee for decommissioning costs is not provided, the original parental guarantee will remain in force until the alternative financial liability is no longer applicable.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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

There are no local content requirements in Norway.

Social programmes

26 | Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

There are no regulatory or statutory requirements to conduct payments under social programmes by a licensee.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 | 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 Ministry of Petroleum and Energy (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 Ministry of Finance.

The state has, through the SDFI, a pre-emption right in all production licences being transferred on the Norwegian continental shelf (NCS). The pre-emption right is exercised through Petoro and should only be exercised in special cases. To date, the pre-emption right has never been exercised, but for each transfer, Petoro will, within 40 days after being notified about the transfer, evaluate whether to exercise the pre-emption right. 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, because 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.

Approval to change operator

28 | 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.

Transfer fees

29 | 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 in relation to a transfer or change of control situation.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

There are no regulatory or statutory requirements determining which entity shall be the owner of facilities and equipment used for oil exploration, development, production and transportation activities. Hence, it may either be owned by the licensees, contractors or other legal entities. Facilities and equipment used for exploration activities (such as drilling rigs and seismic vessels) are in practice owned by contractors. Production facilities (such as production platforms, FPSOs) are normally owned by the licensees but there are several examples where other legal entities have ownership of production facilities. Oil pipelines

are normally owned by a joint venture consisting of the same licensees as in the production licence utilising the capacity in the oil pipeline.

There is no transfer of ownership of facilities entering the country and ownership is only transferred through privately initiated transactions (except for a bankruptcy situation). This is normally also the case after cessation of production or end of the licence period but, in these circumstances, the Norwegian state has a special right to take ownership of permanently placed installations owned by the licensees. Hence, permanently placed installations owned by other parties than the licensees are not affected by this rule. The Norwegian state has never exercised this right and it is unlikely that the option will be used in the near future.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 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 Regulation.

The licensees are obliged to submit a decommissioning plan to the Ministry of Petroleum and Energy (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 Convention for the Protection of the Marine Environment of the North-East Atlantic 1992 (OSPAR) Decision 98/3 on the Disposal of Disused Offshore Installations, the IMO guidelines and UNCLOS.

Security deposits for decommissioning

32 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 MPE may request a parental guarantee or other security, but there is no requirement to obtain a security deposit in respect of future decommissioning liabilities. However, if a licence or a participating interest in it 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 Regulation. Frequently, 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

Regulation

33 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 Ministry of Petroleum and Energy. Onshore pipeline transportation is governed by the Regulation of 8 June 2009 No. 602 and is administered by the Directorate for Civil Protection and Emergency Planning (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 Regulation of 8 December 2009 No. 1481 and the Regulation of 15 December 2009 No. 1543, which are partly based on the International Convention for the Safety of Life at Sea 1974. 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 Regulation 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 European Agreement concerning the International Carriage of Dangerous Goods by Road 1957 convention and the international regulations concerning the International Carriage of Dangerous Goods by Rail.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Production sharing contracts are not used on the Norwegian continental shelf.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

The main 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 Regulation of 12 February 2010 No. 158, which sets out certain criteria for HSE in petroleum activities (applicable to activities conducted offshore and certain specifically mentioned onshore plants and refineries);
- the Management Regulation of 29 April 2010 No. 611, which sets 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 Regulation 29 April 2010 No. 634, which sets out certain criteria when designing offshore facilities used in petroleum activities (applicable to activities conducted offshore);

- the Activities Regulation of 29 April 2010 No. 613, which governs 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 Regulation of 29 April 2010 No. 612, which sets 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 general rule, all mobile offshore facilities are subject to obtaining an acknowledgment of compliance before the start-up of activities. This is provided by the Petroleum Safety Authority (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. This responsibility covers all phases of the relevant activities, including planning and design, construction and operation, and decommissioning including removal. All licensees conducting activities on the Norwegian continental shelf 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.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? 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 various 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, 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 years, or both.

The Norwegian Labour Inspection Authority supervises compliance with the WEA.

TAXATION

Tax regimes

37 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 Norwegian continental shelf (NCS) are governed by the Petroleum Taxation Act. The Act currently levies a special tax of 56 per cent in addition to the ordinary Norwegian corporate tax rate of 22 per cent. Therefore, 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 also a special uplift allowance when calculating the special tax. Owing 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.

Consent from the Ministry of Finance (MoF) is required for any transfer of a licence or a participating interest in a licence. MoF approval may 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. 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 MoF without a special ruling. One condition is that a description of the licence transfer and its tax consequences is sent to 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 2020 is 1.15 Norwegian kroner per litre of produced oil or Sm3 gas.

COMMODITY PRICE CONTROLS

Crude oil mining

38 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 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

Competition enforcers

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

The Norwegian Competition Act of 5 March 2004 No. 12 is enforced by the Norwegian Competition Authority (NCA), whose decisions may be appealed to a relatively newly established autonomous appeal body, the Competition Complaints Board. A decision by the NCA determining that an action does not violate any competition laws or a decision not to intervene against a merger cannot be appealed. The decisions of the Competition Complaints Board will be subject to judicial review directly before the Court of Appeal. The new appeal system entered into force on 1 April 2017.

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 the European Free Trade Association 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.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

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. Therefore, there are no notification requirements or other procedures to obtain a determination by the NCA that a proposed action does not violate any competition law. The NCA may initiate investigations of a violation of the Competition Act based on complaints by third parties or ex officio. There are no formal legal time limits for the NCA's investigations of an infringement of the prohibitions against anticompetitive behaviour. NCA investigations into possible infringements of competition law often amount to a lengthy process and may take years in the most complex of cases.

'Concentrations' between independent undertakings (mergers and acquisitions) above certain turnover thresholds must, on the other hand, be notified and approved by the NCA under the domestic merger control regime or by the EC pursuant to their competence as defined in article 57 of the EEA Agreement.

Such notification to the NCA is required only if:

- the combined aggregate turnover of the undertakings concerned in Norway is more than 1 billion Norwegian kroner; and
- at least two undertakings concerned each have a turnover in Norway exceeding 100 million Norwegian kroner.

An acquisition of assets in a producing field on the Norwegian continental shelf may, under certain circumstances, be considered as a concentration, in which case, insofar as stipulated turnover thresholds are met, must be notified to the NCA under the domestic merger regime.

The NCA is obliged to adhere to strict deadlines when assessing a proposed concentration. Within 25 working days from receiving a notification, the NCA must either clear the concentration or initiate a phase II investigation. If the NCA decides to initiate a phase II investigation, it must either clear the concentration or issue a statement of objections informing the parties that it is intended to prohibit the merger within 70 working days of receiving the notification. The NCA shall intervene if the concentration will significantly impede effective competition. After receiving the statement of objections, the parties shall be given 15 working days to respond to the NCA's preliminary conclusions. After receiving the comments of the parties, the NCA will have 15 working days to issue a final decision. The NCA merger investigation may therefore last up to 100 working days. However, if the parties have proposed remedial actions, the process can be extended by an additional 15 working days. Furthermore, the process may be extended by another 15 working days upon request by the parties. If the NCA does not comply with the set deadlines, the parties may proceed with the merger.

A company may face sanctions in the form of administrative fines if it fails to notify a concentration to the NCA, or if it infringes the standstill obligation that applies during the period the NCA is assessing a notified merger.

Infringements of the prohibitions in the Act can be sanctioned with administrative fines by the NCA. Serious infringements are considered criminal offences, and Norwegian courts can in addition impose penal sanctions such as imprisonment or fines on individuals.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

Seismic data is either acquired for oil companies' exclusive use (proprietary data) or for non-exclusive use (multi-client data).

Proprietary data is normally acquired by the licensees under a production licence and the seismic data is owned by the relevant licensees. The proprietary data may also have been collected under an exploration licence, although this is not often the case.

Multi-client data is normally owned by a seismic company providing the acquisition of the data under an exploration licence and the data is, in turn, licensed for a specific duration to oil companies. If such seismic data shall be used within a production licence, all licensees must consequently be part of the lease contract and pay the applicable fee to be able to have access to and utilise the data.

The licensee must, within three months after the specific seismic activity under an exploration licence is completed, send data,

registrations and results from the activity to the Norwegian Petroleum Directorate. It is a requirement that seismic data in both raw and processed formats must also be submitted to Diskos, the National Data Repository for petroleum data in Norway.

Data is released and made publicly available after a certain number of years (two, five, 10 or 20). During the confidentiality period, the data owner is in control of the data and provides access to oil companies by entering into agreements on either sale (proprietary data) or lease (multi-client data) of specific data sets.

INTERNATIONAL

Treaties

42 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/EC (the Gas Market Directive), the latter being repealed twice (by 2003/55/EC and 2009/73/EC).

The convention for the protection of the maritime environment of the North-East Atlantic and the UNCLOS are important international treaties that are both applicable topetroleum activities under Norwegian law.

Norway is a contracting state to both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. Further, Norway is a party to bilateral investment protection treaties entered into with different states regarding mutual promotion and protection of investments. The Agreement on the EEA and the Trade-Related Investment Measures, Trade-Related Aspects of Intellectual Property Rights and General Agreement on Trade in Services' agreements (treaties of the World Trade Organization), to which Norway is a party, are considered bilateral investment treaties. An example of a multilateral treaty ratified by Norway is the cooperation agreement between member states of the European Free Trade Association and the European Investment Bank.

Foreign ownership

43 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?

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 Norwegian continental shelf.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

Cross-border sales or deliveries of these products are not governed by any specific legal requirements. Licensees are free to export their share of all petroleum produced and have no preferential supply obligations to the Norwegian market. However, in a situation of national energy shortage (energy crisis or war, etc) the authorities may demand that crude oil or crude oil products are delivered to the Norwegian market. In this scenario, the requirement to deliver to the Norwegian market may also be given priority over the export rights of the oil producer. The delivery requirement must in all circumstances comply with Norway's obligations under the EEA Agreement, and we are not aware of any situations where the special right to request delivery to the Norwegian market has been applied by the authorities.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

High number of production licences awarded in annual licensing round

On 14 February 2020, the Norwegian Ministry of Petroleum and Energy offered 69 production licences on the Norwegian continental shelf.

The licences were distributed over the North Sea (33), the Norwegian Sea (23) and the Barents Sea (13). Twenty-eight oil companies, ranging from the large international majors down to smaller domestic exploration companies, were awarded ownership interests in one or more production licences.

The 'awards in predefined areas' licensing rounds cover the most explored areas on the Norwegian shelf. One of the primary challenges in mature areas is the expected decline in discovery size. Minor discoveries will not be able to carry standalone developments but may have good profitability when they can exploit existing and planned infrastructure, or be seen in context with other discoveries or planned developments. Timely discovery and exploitation of such resources is, therefore, important.

Petroleum activities in the ice edge zone (Barents Sea)

The Norwegian state has undertaken not to permit petroleum activities in the 'ice edge zone' in the Barents Sea.

Until now the ice edge zone has been defined as the area where the average period of ocean ice during April is 30 per cent, but the government presented a new definition 24 April 2020 where the borderline is set to the area where the average period of ice during April is only 15 per cent. It is expected that the Parliament will approve the proposal later this spring. It is clearly very important for the Norwegian petroleum industry that none of the production licences awarded in the 23rd licensing round (south-east Barents Sea) crossing the proposed borderline of the new 'ice edge'. Petroleum activities are therefore likely to still be permitted in these production licences, which is an issue closely linked to the high-profile claim from environmental groups against the Norwegian state.

Norwegian Supreme Court to rule on constitutionality of production licence award

In October 2016, the environmental groups Greenpeace and Natur og Ungdom sued the Norwegian state claiming that the government's opening areas in the south-east Barents Sea for oil and gas exploration and awarding production licences to 13 oil companies in the 23rd licensing round was a breach of article 112 of Norway's Constitution, which enshrines the right to a healthy, diverse and productive environment for present and future generations.

The case was tried before Oslo District Court in November 2017, and the Court ruled in favour of the Norwegian state in its judgment of 4 January 2018. The decision was appealed, and Borgarting High Court of Justice also ruled in favour of the state.

The High Court stated in the judgment of 23 January 2020 that article 112 of the Constitution provides individual rights to Norwegian citizens that may be tested before the courts, clarifying that it is the actual emissions in Norway caused by the petroleum activities that are vital when assessing a potential breach of article 112. The Court noted that it is highly uncertain whether granting of production licences also implies a later discovery of petroleum with commencement of production, and that the emissions caused by exploration activities are very limited.

When assessing potential environmental harmful effects of oil and gas production, consideration must be taken of all preventive measures being implemented. The High Court emphasised that the threshold for construing a breach of article 112 is high, and that the courts should act with restraint when considering overruling decisions that are based on comprehensive assessments through political processes in the government and parliament. The High Court concluded that the award was not unconstitutional.

The High Court's decision was appealed, and the Supreme Court's Appeal Selection Committee decided on 20 April 2020 that the appeal will be heard by a plenary session of the Supreme Court. This case will attract great public interest, and it is expected that the proceeding will take place before the end of 2020.

Carbon capture and storage (CCS)

The Norwegian government has made CCS one of five priority areas for national climate action.

The CO2 Technology Centre Mongstad is the world's largest CO^2 capture testing and technology improvement facility and is a vital part of the government's CCS work.

A new full-scale CCS project in Norway is in progress. The companies Equinor, Total and Shell are cooperating on studies of CO^2 transport and storage and submitted the development plan for the construction of the first full-scale CCS demonstration plant to the Ministry of Petroleum and Energy in May 2020. The plan is to complete the construction of the facility in 2023/2024, and the plant has an expected operation period of 25 years. It is estimated that the first part of the project has an investment cost of about 6.9 billion Norwegian kroner. The government's approval and investment decision are scheduled for the second half of 2020.

Short-term market outlook – Coronavirus

The recent significant drop in oil prices and the uncertain market outlook has already led to several Norwegian offshore projects being suspended, reducing the expected investment level on the Norwegian continental shelf (NCS) in the coming year. Most of the ongoing projects are, however, said to be kept on track. One example is the Nova subsea tie-back project being developed by Wintershall Dea. The project remains on-schedule for start-up in 2021 despite coronavirus concerns related to the ongoing fabrication work on the yard.

To ensure that the investment level on the NCS is upheld during the period 2020 to 2021, the Norwegian government announced on the 30 April 2020 that it will introduce temporarily changes in the tax system to enable oil and gas companies holding production licences on the NCS to deduct all costs immediately against tax in the year the investments are made. The normal system implies that such costs are deducted by 5.2 per cent per year throughout six years. The government predicts that the tax reliefs will release liquidity of around 100 billion kroner for the Norwegian industry.

The market for oil and gas transactions in Norway has been very good, with ExxonMobil's transfer of all non-operated assets to Vaar Energy during autumn 2019 the most recent highlight. Several planned asset sales have recently been withdrawn from the market, and many ongoing transactions are temporarily put on hold due to the uncertain market outlook.

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OPEC, together with Russia and other major oil producing countries, reached an agreement on 12 April 2020 to temporarily (May and June 2020) cut oil and gas production by approximately 10 million b/d, equal about 10 per cent of global supply. This is the deepest cut ever agreed between the world's major oil producers. Also the Norwegian government has temporarily cut the output from the NCS. On 29 April 2020 it was announced that oil production will be reduced by 250,000 b/d in June and by 134,00 b/d in the second half of 2020, which represents a reduction in the total Norwegian oil production by approximately 13.5 per cent and 7.2 per cent, respectively. The massive drop in demand for oil products is expected to continue during the coronavirus crisis, and the producers therefore plan for low oil prices until 2021.

Oman

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GENERAL

Key commercial aspects

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

Oman is the largest oil and gas producer in the Middle East that is not a member of the Organisation of the Petroleum Exporting Countries (OPEC) (excluding Qatar). While there is activity in offshore oil and gas blocks in Oman, oil is largely an onshore activity. The production and export of crude oil and natural gas is the biggest contributor to the Omani economy. The sultanate's oil production, including condensates, stood at 324.3 million barrels up to the end of November 2019, compared with 326.3 million barrels over the same period of the previous year, according to the latest data released by the National Centre for Statistics and Information. Of the total production, crude oil production was down by 3 per cent at 281.3 million barrels, while condensates production rose by 18.7 per cent to touch 42.9 million barrels. Oman recorded a daily average crude oil production of 971,000 barrels at the end of November 2019, against 977,100 barrels over the same period of 2018 as per the National Centre for Statistics and Information's report.

Oman's exported crude is the basis of a major trading classification, DME Oman, which is listed on the Dubai Mercantile Exchange. Oman exported 281.7 million barrels of crude oil up to the end of November 2019, against 269.2 million barrels for the same period in 2018, an increase of 4.6 per cent. In addition to exporting crude oil, Oman processes oil at the Mina Al Fahal refinery in Muscat and at another facility in the Sohar Port Industrial Complex. In April 2018 a new refinery project at Duqm got under way, with the plant set to significantly increase refining capacity when it comes online in 2022, while an expansion was completed at Sohar in May 2018.

According to the Central Bank of Oman's Annual Report 2018, the share of petroleum activities in GDP rose to about 36 per cent during 2018 as compared with about 29 per cent in 2017. However, the three-year moving average share of petroleum activities in nominal GDP has declined in recent years, suggesting a modest decoupling of overall GDP from petroleum activities.

Regarding oil reserves, and according to the June 2018 'BP Statistical Review of World Energy' report, Oman had proven oil reserves of 5.4 billion barrels, or 700 million tonnes, at the end of 2017. This was around 0.3 per cent of the global total, and roughly the same as in 2016.

With regards to oilfields, a primary oilfield is the Lekhwair oilfield in the north-west, part of the Fahud salt basin. Other important oilfield areas are the South Oman salt basin, which contains several oilfields, and the Mukhaizna oilfield, which contributes around 13 per cent to Oman's entire oil output.

Government-owned companies produce a majority of the oil in Oman; two major state-owned companies operating in this field should be highlighted.

- Petroleum Development Oman LLC (PDO), which is the main operator of oil assets and producer of oil in Oman. PDO pumps the bulk of the sultanate's crude oil. The government owns a 60 per cent stake in the company, with the remaining shares divided between foreign interests: Shell (34 per cent), Total (4 per cent) and Partex (2 per cent). PDO operates 178 oilfields, 14 gas fields, 21 production stations, more than 10,000 active wells, 18,500km of pipelines and flowlines, and 154 operating units.
- OQ Group, which resulted from the recent integration of the ORPIC and Oman Oil groups of companies, which were leading in the processing, transmission and distribution of oil. Further state-owned companies are planned to be integrated by the Government of Oman into OQ; these include Oman Gas Company, Salalah Methanol, OOCEP, Oman Trading International, Oxea, Duqm Refinery and Petrochemicals Industries, and Salalah Liquified Petroleum Gas. According to press statements, the ultimate aim of the integration is to help increase oil production through efficiency by raising the production rate from 655,000 barrels per day to 1 million barrels per day by 2030. According to the government, OQ should be able to increase its absolute contribution to Oman's GDP to US$20 billion per year.

The government encourages private companies to undertake oil and gas activities in Oman and, as a result of the government's efforts, blue-chip companies such as BP, Occidental, Shell, Total and Partex are undertaking oil and gas activities in Oman. As shareholders in PDO and other state-owned oil companies, Shell, Total and Partex have long maintained influential presences in Oman. BP and Occidental Petroleum are also major IOCs with significant footprints in Oman, and Eni entered the country with an offshore block in 2017. In addition, there is a large group of foreign-owned exploration, survey and drilling companies operating in Oman, such as KCA Deutag, Schlumberger, MB Petroleum, Gulf Petrochemical Services and Trading, and Abraj Energy Services.

Energy mix

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

Oman's Oil consumption increased from 0.52 million tonnes in 1969 to 8.84 million tonnes in 2018, growing at an average annual rate of 8.80 per cent. The country consumed 198,000b/d of petroleum and other liquids in 2017, most of which were petroleum products refined at Oman's refineries.

Total consumption of natural gas in Oman rose 11.9 per cent to 41,844 million cubic metres during the first 11 months of 2018 against 37,399 million cubic metres in the same period of last year. Oman

consumes slightly more than 70 per cent of the natural gas it produces. Consumption more than doubled from 2007 to 2017.

Government policy

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

The government's overall detailed policy for the domestic oil and gas sector is not publicly available; however, it is generally based on satisfying the local demand and using the produced oil and gas to push forward the substantial developments currently being undertaken by the government of Oman. Dealing with growing domestic gas needs is one of the key challenges facing local policymakers, as the economy and population continue to expand. This major challenge led to the commencement of projects aimed at both boosting local production and importing gas from abroad, for example, Qatar supplying gas to Oman via Dolphin Energy's underwater pipeline.

The Council for Financial Affairs and Energy Resources, acting in conjunction with the Ministry of Oil and Gas (pursuant to Royal Decree 60/1996) and its various departments, directs activities relating to the exploration, extraction and production of both natural gas and oil, and it sets out the policy governing the oil and gas industry in the country in conjunction with the Ministry of Oil and Gas. The Ministry of Oil and Gas comprises six general directorates. Each directorate is responsible for different areas: planning and studies, exploration and production, petroleum industries, petroleum investment management, marketing, and administrative and financial affairs.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

There is no publicly available register for licences. Copies of the relevant licences may be requested from the licensees themselves. The Commercial Registration database, which is available on the Ministry of Commerce and Industry's website allows the public to access commercial registration files of Omani companies and branches; such files indicate whether the company or branch is licensed to undertake oil and gas activities. However, it does not show the number, validity period and other information pertaining to the licence. There is no publicly available register setting out oilfield ownership or concessions. The shareholding structures of operators who are not unincorporated joint ventures or joint stock companies, however, can be found on their respective commercial registration files accessible on the abovementioned website.

Legal system

5 | Describe the general legal system in your country.

Oman is a civil law country. The Basic Law of Oman (Royal Decree No. 101/1996), as amended (the Basic Law) states in its article 2 that Islam is the religion of Oman, and that Islamic shariah is the basis of legislation in Oman. Article 77 of the Basic Law provides that all existing laws and regulations shall remain in force, provided that they do not conflict with any of the provisions of the Basic Law. Key laws governing day-to-day transactions include Royal Decree 55/1990, issuing the Commercial Law of Oman, and Royal Decree 29/2013, issuing the Civil Transactions Law. Legislation in the sultanate consists of primary and secondary legislation. Primary legislation consists of Royal Decrees issued by HM the Sultan of Oman. Secondary legislation is issued pursuant to ministerial decisions and instructions according to specific powers delegated by Royal Decrees to the relevant executive or ministerial body. Enforcement and upholding of law is undertaken by the executive power (ministries, public bodies, etc) within their respective spheres of competence, by security and prosecution departments (eg, the Royal Oman Police and public prosecution), and by the courts of law. The regular judicial system consists of a three-tier hierarchy, with a Court of Cassation (Supreme Court) in Muscat, courts of appeal at Muscat, Nizwa, Sohar, Ibra, Ibri and Salalah, and approximately 45 primary courts in different provinces.

The Industrial Property Rights Law issued by Royal Decree 67/2008 governs the protection and use of, inter alia, patents, trademarks, trade secrets, utility models and industrial drawings against infringement. The Intellectual Property Department at the Ministry of Commerce and Industry of Oman is the national office in charge of registration of intellectual property rights. Oman is a member of the World Intellectual Property Organization and has ratified multiple key treaties in the area of intellectual property protection, for example the Madrid Protocol and the Paris Convention for the Protection of Industrial Property.

Pursuant to the Civil and Commercial Procedure Law issued by Royal Decree 29/2002, applications should be made to the competent court in Oman for the recognition and enforcement of foreign judgments, arbitral awards and orders. An order seeking execution of a foreign judgment or award will not be permitted by an Omani court unless the conditions provided for by law have been satisfied. Oman is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and its ratification of the Convention is in force under Royal Decree 36/1998. Arbitral awards obtained from tribunals constituted in New York Convention member states should be held to be enforceable as a matter of Omani law. An award rendered by a foreign arbitral tribunal (such as the LCIA) as envisaged in the transaction documents would be directly enforceable in Oman through the Omani Courts, subject to the limitations contained within the New York Convention and the provisions of Omani laws.

Oman has robust anti-bribery and anti-corruption legislation covering domestic bribery and corruption. Bribery and corruption are prohibited by the following Royal Decrees:

- the Criminal Law of Oman – Royal Decree 7/2018;
- the Protection of Public Funds and Avoidance of Conflict of Interest Law – Royal Decree 112/2011;
- the Tender Law – Royal Decree 36/2008 (article 41); and
- the Civil Service Law – Royal Decree 120/2004.

Omani law prohibits the offering, acceptance or facilitation of a bribe of a public official, and also prohibits a public official using his or her office in an improper manner or for personal gain or where a conflict of interest would arise. Penalties for offences under these laws include fines together with imprisonment of both the person offering the bribe and the public official accepting it. Crimes of corruption are heavily punished by law.

REGULATION OVERVIEW

Legal framework for oil regulation

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

The Oil and Gas Law, issued by Royal Decree 8/2011, is the key piece of legislation in the sector. The law sets out broad and general obligations for parties that are granted interests in hydrocarbon assets in Oman. To date, the executive regulation of the Oil and Gas Law has not been issued. Rights to explore and exploit oil and gas assets of the sultanate are granted pursuant to exploration and production sharing agreements (EPSAs), which set out the detailed rights and obligations of parties that have been granted rights to explore or exploit hydrocarbons in Oman.

Expropriation of licensee interest

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

The Oil and Gas Law provides that, irrespective of their location in Oman, oil and gas substances in their natural form are the property of the sultanate. However, the government typically grants qualified and licensed state-owned and private contractors and operators certain rights by way of entry into concession and production sharing agreements with them, which should be ratified by way of Royal Decree. Consequently, expropriation of a licensee's interest cannot, from a legal standpoint, take place since the government holds the ultimate ownership of hydrocarbons and the lands they are located within. It may, however, be possible for the government to decide to terminate the concession and production sharing agreements with a licensee and take over the production process and its outcome for a variety of reasons, for example the licensee's breach of law or breach of contract, or for public interest purposes. Unilateral termination by the government of concession and production sharing agreements entered into with licensees rarely happens, however.

Revocation or amendment of licences

8 May the government revoke or amend a licensee's interest?

Yes. It is possible for the government to revoke or amend a licensee's interest on the basis of the Oil and Gas Law or the concession and production sharing agreements entered into with a licensee.

Regulators

9 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The primary regulators are the Council for Financial Affairs and Energy Resources, acting in conjunction with the Ministry of Oil and Gas. Their regulatory authorities derive from legislation as follows.

As per Royal Decree 37/97, the Council of Financial Affairs and Energy Resources:

- considers state investments in oil and gas;
- formulates the general policy regulating the production and transport of oil and natural gas; and
- fixes oil and gas sale prices for the purposes of local consumption.

As per Royal Decree 2/2008, the Ministry of Oil and Gas:

- prepares and carries out studies, plans and policies to ensure the optimum use of oil and gas wealth;
- manages and supervises the necessary surveys of oil and gas wealth sources and the necessary economic studies for any projects relating to their exploitation in coordination with the concerned government entities;
- supervises all activities relating to researching and drilling for oil and gas and any production therein by companies awarded concessions;
- conducts studies on international oil and gas market conditions, which are used when formulating crude oil and natural gas production marketing policies;
- concludes agreements with specialised companies and supervises their implementation of the terms and conditions therein;
- protects the sultanate's interests with specialised companies operating in the oil and gas industry and ensures that these companies abide by all applicable laws;
- manages and supervises government investments in the Omani oil and gas sector in coordination with the relevant government entities;
- prepares draft laws and regulations to govern the functioning of the oil and gas sector;
- represents the sultanate at international platforms relating to the oil and gas sector; and
- coaches and trains individuals to undertake ministry work.

The Ministry of Oil and Gas is the main regulator in charge of enforcing administrative penalties for breach of the Oil and Gas Law, its decisions and the agreements it enters into with licensees with regards to oil and gas. It may also refer offenders who committed acts that may be classified as criminal offences to public prosecution. Administrative penalties typically take the form of suspension or revocation of the licence granted by the Ministry of Oil and Gas, imposition of financial fines on the offenders and confiscation of tools and instruments used to commit the offence. Criminal penalties mainly include imprisonment and fines.

Government statistics

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

The Ministry of Oil and Gas and the National Centre for Statistics and Information maintain the statistics.

NATURAL RESOURCES

Title

11 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

Article 3 of the Oil and Gas Law makes it clear that, irrespective of their location in Oman, oil and gas substances in their natural form are the property of the state. In this respect, the state is represented by the government of Oman which, in turn, is represented by the Ministry of Oil and Gas. Oil and gas substances may be owned by licensees following their processing or conversion to forms other than their natural state (eg, plastics).

Exploration and production – general

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

The majority of oil exploration and production activities are conducted onshore; however, there are also several offshore activity sites such as the offshore Block 52, awarded to Eni and Oman Oil Company Exploration & Production LLC, Yumna oilfield in block 50 offshore Oman and West Bukha field in Block 8 located offshore in the Strait of Hormuz. Oman has several natural reserves and protected cultural landscapes where the undertaking of oil and gas activities is not allowed except with the permission of the Ministry of Environment and Climate Affairs. It is mandatory to obtain approval from the Ministry in any case should an oil and gas project be contemplated and to undertake evaluation of the project before its licensing and implementation to assess its potential harmful impact on the environment and plan the measures necessary to reduce or eliminate it.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

The government (represented by the Ministry of Oil and Gas) typically grants qualified and licensed state-owned and private contractors and operators the right to explore, extract and produce oil through concession and production sharing agreements with them, which should be ratified by way of Royal Decree to be effective. The scope of negotiability of such agreements, which are generally very sophisticated and comprehensive standard templates, is extremely narrow, and the Ministry of Oil and Gas is typically reluctant to accept changes unless they are economically or legally justifiable. The cost and time frame for the process of entry into, and approval of, such agreements generally vary case by case. As for licences issued by the Ministry of Oil and Gas, the same constitute non-negotiable regulatory instruments.

Government participation

14 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 right to participate in a licence. The government is only entitled to a share of the production under exploration and production sharing agreements (EPSAs). The size of the share is negotiated based on the scale and economies of the project. The cost recovery mechanism, if any, will be specified in the relevant concession and exploration and production sharing agreements (which are not publicly available).

Royalties and tax stabilisation

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

Since the majority of oil production is based on EPSAs, dues payable to the government are based on the terms of the particular agreement entered into. These agreements provide that the revenue from oil production is to be shared between the government and the concession holder or company in an agreed ratio, for example 20:80, or 30:70, as the case may be, after meeting the costs involved. At present, royalty rates are not available. A formula may be agreed between the government and the concession holder in the EPSA for computation of the amount of income tax to be paid by the concession holder.

Additionally, the government may agree to grant a concession holder an exemption in the concession agreement from certain taxes, levies and duties applicable under Omani law for the term of the concession agreement. No tax stabilisation legislation is in force in Oman at present.

Licence duration

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

Although the original term of the first concession agreements was 75 years, more recently oil concession agreements have been granted for much shorter periods. Generally a three-year exploration licence is granted, subject to an extension of three years. If oil is discovered and found to be commercially viable, then agreements and contracts are entered into with the government for a 10-year or 20-year period. In the event of a declaration of a commercial discovery in a concession area during the exploration stage, the Oil and Gas Law gives the licence holder priority in obtaining a concession for the exploitation of the area.

Extent of offshore regulation

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

The regulatory regime extends up to the international offshore border of Oman. The borders of Oman were demarcated by peaceful negotiation under the reign of the former ruler, HM Sultan Qaboos Bin Said, with all the neighbouring countries, principally the UAE, Yemen and Saudi Arabia.

Onshore offshore regimes

18 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 separate legal regimes for onshore and offshore exploration and production, as the Oil and Gas Law draws no specific distinction between onshore and offshore activities with regards to the applicability of its provisions. It may, however, be possible that the contents of EPSAs would slightly differ based on whether the oilfield is located onshore or offshore.

Authorised E&P entities

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

The Oil and Gas Law does not specify which types of entities are eligible to apply for a concession. Concession holders will either be required to incorporate a subsidiary under the Omani Commercial Companies Law issued by Royal Decree No. 18/2019 (the Commercial Companies Law) or to register a foreign branch office with the Ministry of Commerce and Industry. The tender documents for a specific block issued by the Ministry of Oil and Gas should typically specify whether the successful bidder will be required to incorporate a subsidiary and, if so, the time frame for completing the registration formalities for such an entity. If the successful bidder is required to incorporate a subsidiary then the time frame for completion of such incorporation formalities should take no longer than 10 to 15 business days from the date of receipt of the correct documentation. The fees payable for registration of a company or branch office are generally modest and do not exceed a few thousand riyals depending on the type of business entity to be incorporated. Exploration and production activities may be conducted only by holders of exploration and production permits or concessions from the Ministry of Oil and Gas, as per the terms of the agreement that has been entered into.

Regulatory powers over operators

20 What controls does the regulatory body have over operators? Can operatorship be revoked?

The Ministry of Oil and Gas enforces the Oil and Gas Law and ensures compliance by contracting parties with both the law and the terms of the agreements. The Ministry may typically audit the operators, and request documents, information and reports from them and issue instructions

and notices to them to take certain measures (eg, curing breaches) in relation to their activities. The Ministry of Oil and Gas may terminate the agreements or licences for breach of law or contract, or for public interest reasons.

Joint ventures

21 | What is the legal regime for joint ventures?

A joint venture can be either a contractual (unincorporated) joint venture or a corporate joint venture; both types constitute commercial companies under the Commercial Companies Law. An unincorporated joint venture is generally regulated and governed by contract (to the extent that its terms do not conflict with the provisions of the Commercial Companies Law), while an incorporated joint venture is governed by the robust provisions of the Commercial Companies Law and its articles of association or constitutive contract.

Reservoir unitisation

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

There is neither legal nor regulatory guidance on this subject. With regards to cross-border reservoirs, the relevant governments would agree on the limits of production.

Licensee liability

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

Article 12 of the Oil and Gas Law states that the Ministry of Oil and Gas shall, prior to entry into the concession agreement, request the counterparty to provide and maintain throughout the period of the agreement a financial security whose value ranges between 2 per cent and 5 per cent of the value of the agreement, to ensure that the counterparty fulfils its contractual liabilities. In the case of failure to meet these liabilities, such security shall be confiscated. The Oil and Gas Law is silent as to whether liability is joint or several. The liability of the party under a concession may be dealt with in further detail in the concession agreement and EPSAs. With regards to tort liability, it is prohibited to agree on limiting or exempting from same pursuant to article 183 of the Civil Transactions Law. Additionally, the Omani courts do not uphold liquidated damages clauses, and may reduce (or increase) their amount to correspond to actual losses suffered by an aggrieved contracting party pursuant to article 267 of the Civil Transactions Law.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

The Oil and Gas Law sets out no provisions on parental guarantees or other forms of economic support. Parental guarantees are not, in our experience, common practice; however, they may be demanded by the government where the party to the concession agreement is a special purpose vehicle or an entity with insufficient financial credentials. If, however, the licensee is a branch, the parent company is generally required as part of setting it up to provide an undertaking confirming that it shall be responsible for all of the branch's debts and liabilities.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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

Petroleum Development Oman LLC, along with the Ministry of Oil and Gas and 12 other Oil and Gas companies launched in 2012 an in-country value (ICV) programme to develop the local market, train Omanis and increase their employment chances. Additionally, several legal provisions and laws provide for ICV obligations, such as:

- article 36 of the Oil and Gas Law, which provides that concession holders shall recruit qualified national manpower and, in coordination with the Ministry of Oil and Gas, prepare annual training programmes aimed at coaching the Omanis for professional and technical works and higher executive positions and responsibilities related to operations to gradually replace the expatriate manpower with them;
- article 18 of the Labour Law, issued by Royal Decree 35/2003, provides that employers must abide by the specified Omanisation percentages – breach of Omanisation percentages is punishable by the Labour Law; and
- the law establishing the Omani Authority of Partnership for Development, issued by Royal Decree 9/2014, which provided for a scheme for partnership between foreign investors who entered into contracts with the government for setting up projects and conducting transactions aiming at boosting the local economy (eg, through the purchase of local goods, through the hiring of local contractors or through the training of Omani manpower).

In addition, exploration and production sharing agreements (EPSAs) and their tender documents typically list the specific ICV with which the counterparty must comply.

Social programmes

26 | Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

The Oil and Gas Law does not provide for such payments; however, they may be required in the context of ICV if provided for in the relevant EPSA agreement.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 | 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?

Article 19 of the Oil and Gas Law provides that a party with whom the government has entered into a concession agreement cannot waive or give up its rights or liabilities stipulated in the concession agreement without the written approval of the Ministry of Oil and Gas. Approval for transfer of all or part of an interest in a concession agreement is granted by means of a Royal Decree. No specific procedure for obtaining the Ministry of Oil and Gas's prior approval has been laid down in the Oil and Gas Law. From our experience, it is likely that the concessionaire may be required to submit a written application, supplemented with relevant documentation and evidence of the financial and technical capability of the proposed transferee. Owing to the requirement for a Royal

Decree, the process may take several months to process and complete, and each case will depend on its own set of circumstances. With regard to a change of control, there is no express provision under the law that may require the government's prior approval for a change of control of a concessionaire; however, concession agreements and exploration and production sharing agreements typically provide for the requirement of such approval, except where the transfer is being made to an entity that controls or is being controlled by the licensee.

Omani law provides for no statutory or regulatory pre-emption rights in favour of the government. Pre-emption rights are available to the government only if it is a shareholder in the corporate concession holder.

Approval to change operator

28 | Is government consent required for a change of operator?

Article 19 of the Oil and Gas Law provides that it shall be unlawful for the concessionaire to waive or transfer its rights or liabilities stipulated in the concession agreement without the prior written approval of the Ministry of Oil and Gas, and that a royal decree shall be issued on such waiver or transfer. While this is not expressly set out in the Oil and Gas Law, a change of operatorship would amount to a disposal of the operator's rights under the joint operating agreement, and will not be effective without prior approval of the government of Oman.

Transfer fees

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

The Oil and Gas Law sets out no specific fees or taxes on a transfer or change of control.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

During the term of the concession agreement or exploration and production sharing agreement, such assets are the property of the licensed holders of concession who constructed them under the agreements. Upon termination of the licence or agreement, the concession holders must, pursuant to article 16 of the Oil and Gas Law, restore the concession to its original state within a period determined by the Ministry of Oil and Gas and remove all of the fixtures, machinery and equipment in the area at their own expense; the Ministry may, however, and case by case, offer to purchase assets from the concession holders.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 | 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?

No specific and detailed legal regime is prescribed in the Oil and Gas Law with respect to the abandonment and decommissioning of oil and gas facilities. Such provisions are more likely to be set out in the concession agreement or exploration and production sharing agreement and may include a particular work programme that sets out the measures to decommission disused facilities and pipelines, and the removal of debris and environmental monitoring of the relevant area after removal of the facilities and pipelines. Article 16 of the Oil and Gas Law, however, provides that the concession holder shall, after the termination of the concession agreement for any reason whatsoever, restore the concession area to its natural position within the period fixed by the Ministry for each case separately by removing any premises, factory, machinery, equipment, appurtenance, leftovers or other substances, or any other kind of property at its own expense; this provision is likely to also apply to abandoned and decommissioned oil and gas facilities.

Security deposits for decommissioning

32 | 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 and Gas Law does not require the concession holder to submit a security deposit for future decommissioning liabilities.

TRANSPORTATION

Regulation

33 | 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?

All crude oil from the northern and southern fields is collected and blended into Omani export blend. The transportation of crude oil and crude oil products is governed by the regulations laid down by the Council of Financial Affairs and Energy Resources. In this respect, and according to Royal Decree 37/97, the Council for Financial Affairs and Energy Resources regulates all aspects of the petroleum industry, including formulating the general policy regulating the production and transport of oil and natural gas. According to article 4 of the Oil and Gas Law, oil and gas cannot be transported or stored without a licence from the Ministry of Oil and Gas, and transport and storage should be conducted in accordance with the requirements and standards issued by the ministry after coordination with the Council for Financial Affairs and Energy Resources.

In addition, with regards to oil and gas pipelines, article 28 of the Oil and Gas Law provides that oil and gas pipelines shall have prohibited areas with a width of 25 metres on each side of the pipeline centre. The article further provides that the Ministry of Oil and Gas may, in coordination with the competent authorities, specify a smaller prohibited area for populated areas.

Further, the Civil Defence Branch of the Royal Oman Police issues permits for the transport and storage of all hazardous materials. The Ministry of Environment and Climate Affairs issued Regulation 25/2009 regarding the use of and trading in chemical substances, which applies to oil and gas substances. Further, Royal Decree 10/2016 sets out a general framework regulating the land transport of goods and individuals.

COST RECOVERY

Determining recoverable costs

34 | Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Any cost recovery mechanism will be specified in the exploration and production sharing agreements or the JOAs, which are not publicly available.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

According to article 22 of the Oil and Gas Law, the concession holder must:

- develop a comprehensive security plan to meet all security and safety requirements in the concession area that satisfies the provisions set out in applicable laws; and
- coordinate with the Royal Oman Police for its approval.

The plan must be renewed every two years. Additionally, article 37 of the Oil and Gas Law provides that the concession holders shall formulate the rules and take the measures required to safeguard the manpower at the sites where the operations are carried out.

Furthermore, the Ministry of Manpower set out vocational health and safety requirements in Decision 286/2008 (as amended) with which all employers must comply. One of the chapters in the Labour Law governs health and safety requirements in the workplace and reiterates the obligations of both employers and employees in this respect. In this regard, the Ministry of Manpower may:

- inspect workplaces;
- identify health and safety violations;
- instruct employers to remedy such violations; and
- take action against the employer should they fail to abide by such instruction.

With respect to environmental protection, article 39 of the Oil and Gas Law provides that the concession holders must carry out their operations with due care, in accordance with the technical standards provided for in their exploration and production sharing agreement and in a manner that guarantees environmental protection. Concession holders are required to obtain an environmental permit before beginning the project. An application, supported by an environmental study, should be made to the Ministry of Environment and Climate Affairs.

The penalties that may be imposed on the concession holder for breach of health, safety and environmental requirements include administrative penalties (imposition of administrative fines, suspension of revocation of licence, rectification of breach at the concession holder's expense) and criminal penalties (imprisonment, a fine or both) depending on the nature of the breach and its severity.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The officially published Omanisation targets for the Oil and Gas industry, setting the minimum percentage of employees that should be Omani nationals are as follows:

- 90 per cent of employees in production and operation;
- 82 per cent of the employees in direct services;
- 88 per cent of the employees in assisting services; and
- 82 per cent of the employees in any local companies.

With regards to visa requirements for foreign labourers, the employer (as sponsor) applies for both the labour licence from the Ministry of Manpower and the employment visa from the Royal Oman Police.

To employ a foreign worker a labour licence is required, and the employer must submit an application at the relevant directorate within the Ministry of Manpower. The application must fulfil the following requirements:

- the employer is compliant with Omanisation rules;
- the total number of requested staff to be foreign nationals is appropriate for the operations of the employer; and
- the requested expatriate staff bear the appropriate certifications and qualifications.

Thereafter, the employer must apply for an employment visa at the Royal Oman Police. Certain requirements must be met by the employee for a valid visa application:

- the employee must be between 21 and 60 years old;
- the person must be of the same sex as stated in the labour licence; and
- the nationals of certain countries require a medical certificate.

Once the employment visa is cleared, the employee must obtain a residence card from the Royal Oman Police to legally reside in Oman for the duration of employment. This is done after the foreign employee reaches Oman.

The applicable penalties are varied and depend on the nature and severity of the offence. Penalties generally include administrative penalties (eg, administrative fines) and criminal punishment (eg, imprisonment and fines).

TAXATION

Tax regimes

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

Oil excavation companies pay 55 per cent income tax on their taxable income resulting from oil sale proceeds in accordance with the Income Tax Law, issued by Royal Decree 28/2009. This tax is deductible from the government's oil production share under the applicable exploration and production sharing agreement.

Royal Decree 9/2017 introduced significant amendments to the Income Tax Law. For example, it increased the standard corporation tax rate from 12 per cent to 15 per cent and the minimum tax-free threshold of 30,000 Omani riyals has been removed. It also expanded the scope of the 10 per cent withholding tax to payments made by an Omani company (or a permanent establishment of a foreign company) to a non-resident to payments of dividends, interest and fees for the provision of services.

Finally, value added tax is expected to be implemented in Oman in either 2020 or 2021; this will likely have an impact on the oil and gas market.

The Tax Authority of Oman is the main body in charge of enforcing the tax laws and regulations.

COMMODITY PRICE CONTROLS

Crude oil mining

38 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 mechanism is regulated by the Council for Financial Affairs and Energy Resources and the Ministry of Oil and Gas.

COMPETITION

Competition enforcers

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

Pursuant to Royal Decree 67/2014 (the Competition Law), the Competition Protection and Monopoly Prevention Centre has the authority to prevent or punish anticompetitive or manipulative practices in all business sectors in Oman, except with respect to activities relevant to public facilities fully owned or controlled by Oman. It is not clear what 'public facility' means under the aforementioned law and whether it covers all or part of the activities relating to the oil sector.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

The standards for determining whether conduct is anti-competitive or manipulative are set out in the Competition Law, which provides that the businesses that are deemed to be in a dominant position in the market are prohibited from engaging in practices that would undermine, reduce or prevent competition. A juristic or legal person is deemed to be in a 'dominant position' if it has control of, or influence over, more than 35 per cent of the relevant market; market share is the sole factor for determining a business's dominant position. The Competition Law also prohibits businesses or individuals from entering into agreements or contracts whose purpose is to harm commercial competition in Oman, particularly with regards to the following:

- pricing, discounts, sale or purchase terms and conditions or provision of services;
- limiting production or supply to the market;
- flooding the market leading to unrealistic prices;
- market sharing on a time, customer or geographical basis;
- preventing third parties from carrying out economic or commercial activity within the market;
- refusal to deal;
- making the conclusion of any arrangement conditional on obligations unrelated to the subject matter of the transaction or the agreement; and
- bid rigging and setting stipulations under the tender conditions including without being limited to listing the trademarks of the commodity or a description of the same.

The penalties for breach of the Competition Law covers both administrative penalties and criminal punishments, depending on the nature and severity of the violation.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

This matter is not regulated under the Oil and Gas Law; hence, it is likely covered by the exploration and production sharing agreement, which may determine who has the right to seismic data, and whether reports regarding such data must be delivered to the regulator or third parties.

INTERNATIONAL

Treaties

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

Oman is not a member of the Organisation of the Petroleum Exporting Countries (OPEC) (however, Oman is a member of the World Petroleum Council and the World Trade Organization) and is not bound by the OPEC production and export guidelines. On occasion, however, it has coordinated with OPEC and complied with its decisions to cut oil production to raise oil prices. Oman's oil is used as a benchmark to price the crude oil exported from the Middle East to Asia, largely as a result of it being an independent producer and, therefore, not subject to the price swings induced by OPEC. Oman has ratified multiple bilateral investment treaties, such as the free trade agreement (FTA) with the United States of America. The FTA is a bilateral treaty between the United States and Oman permitting free trade in consumer, industrial and agricultural products. Oman is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Oman is also a signatory to the Riyadh Arab Agreement for Judicial Cooperation.

Foreign ownership

43 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?

Without prejudice to the restrictions and requirements listed under the Oil and Gas Law with regards to the transfer of interest in concession areas and operations to third parties, foreign companies are currently allowed to own 100 per cent of Omani companies pursuant to the new Foreign Capital Investment Law, subject to any restrictions under the yet to be published executive regulations of the Foreign Capital Investment Law. Foreign investors must set up a commercial entity (eg, a company or a branch) or have a commercial agent representing them to conduct transactions in Oman.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

No special rules apply to cross-border sales or deliveries of crude oil or crude oil products. In practice, all of these deliveries are export transactions. Such transactions are closely controlled by the shareholders of the relevant operating companies.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

The current trends are economic diversification to reduce Oman's reliance on the oil and gas sector as the dominant sources of GDP, consolidation of the major state-owned oil and gas companies, and reliance on foreign-listed bonds and *sukuk* to finance the country's internal expenses and development projects. It is expected that efforts to diversify the economy will accelerate under the leadership of the new Sultan of Oman, HM Sultan Haitham bin Tariq Al Said, and further large-scale projects will be implemented to push the economy forward and mitigate and reduce the impact of the negative economic impact of the covid-19 pandemic. Oman has largely removed the local partnership requirements after the new Foreign Capital Investment Law came into force in January 2020, and several ambitious programmes and initiatives have been taken by the government to further attract foreign investors, for example the launching of a public-private partnership programme pursuant to Royal Decree 52/2019.

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GENERAL

Key commercial aspects

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

According to the information released by the Ministry of Energy and Mines, Peru counts (with hydrocarbons) petroleum-equivalent reserves of 3,906Mmboe, of which 434.9Mmstb are of petroleum. The main players in the upstream are Pluspetrol, Repsol, Hunt Oil and CNPC. A vast extension of the country's 18 sedimentary basins remains unexplored. Over the past 20 years, Peru has invested much on its natural gas fields located in the southern part of the country with two pipeline systems bring the gas to Lima and to a liquid natural gas (LNG) plant. The price slump that started in 2014 affected exploration activities in particular. The contracting agency, Perupetro SA, changed its policy in 2017 and again opened the exploration acreage to direct negotiations starting with royalties at 5 per cent. In parallel, the Hydrocarbons Law is being amended allowing for larger maximum-term licences. The political crisis that ended with the resignation of President Kuczynski in March 2018, resulting in then Vice President Martin Vizcarra becoming the new President has reconfigured political priorities, which has led to the Hydrocarbons Law re-entering Congress for approval in the first quarter of 2019. In the meantime, a new hydrocarbons vice ministry was created, which is balancing between reshaping new investments conditions (ie, the new Environmental Regulations for Hydrocarbons Activities were passed in 2018 as well as new regulations for socialising hydrocarbons' projects passed in January 2019) and solving problems caused by old production operations. NOC Petroperu SA is a non-operating partner in the yet-to-be-developed Block 64 field and is also about to take a stake in an important mature oil field (Block 192), which are both close to the Ecuadorian border. Voices exist calling for the connection of the Nor Peruano Pipeline with the Ecuadorian oil fields and connecting the Ecuadorian OCP Pipeline with Peruvian heavy oil fields, but the government still has to define a final position in this respect.

Petroperu SA also operates four oil refineries and an oil pipeline linking oil fields in the Amazon jungle with the Peruvian north coast. Another main player in refining is Repsol that operates the country's largest refinery on the outskirts of Lima. Marketing activities are ruled by the free market; however, despite Petroperu and Repsol being among the most important players, the retail market is also shared with Primax and Aval from Chile and PBF (now owned by Valero). Puma petrol stations were purchased by Repsol at the end of 2018.

Energy mix

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

According to figures released by the Ministry of Energy and Mines at the end of 2018, the structure of the power generation market is as follows:

- hydraulic – 56.34 per cent;
- thermal – 39.67 per cent;
- wind – 2.69 per cent; and
- solar – 1.31 per cent.

Most thermal power generation comes from natural gas-fired plants. Diesel is employed as a source solely in isolated areas not connected to the national power grid.

According to the statistics published by the National Society of Mining, Petroleum and Energy, Peru's internal fuel consumption amounted to more than 270,000bbl/d from January to October 2018. Almost half of the fuel consumption, 41.8 per cent, was diesel, and petrol has a 14.1 per cent share. Most of the consumed fuel is imported because an important part of the local petroleum production is made from heavy oils that cannot be refined into diesel or petrol.

Government policy

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

Peru's National Energy Policy 2010-40 was approved by the Ministry of Energy and Mines through Supreme Decree No. 064-2010-EM.

The declared objectives of this general energy policy are the following:

- achieve a diversified energy mix, with emphasis in renewable sources and energy efficiency;
- achieve a competitive energy supply;
- universal access to the energy supply;
- achieve the utmost efficiency in the production and employment energy chain;
- obtain self-sufficiency in the production of energetics;
- develop the energy activity with the lowest environmental impact and low carbon emissions within a sustainable development framework;
- develop the natural gas industry and its use for domestic, transport, commerce and industry consumption as well as for efficient power generation;
- reinforce the institutions with competence on the energy activities; and
- integrate with the regional energy markets with a long-term view.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

Peru's public Hydrocarbons Registry is part of the Commercial Registry, which, in turn, belongs to the National Public Registries system.

The Hydrocarbons Registry includes a Registry of Contractors where every oil company that has been qualified by Perupetro SA must be registered and a Registry of Contracts where all licence or services contracts, as well as its respective amendments and terminations, must also be registered.

This registry is publicly available by paying a small fee (roughly the cost of the printed copies plus a small administrative fee).

There is no register of oilfields. That said, since the licences or services contracts do not confer land rights, the land needed for the facilities employed in the operations such as tanks, valves, pipelines, etc must be purchased or an easement or surface right must be acquired depending on the nature of the field facility.

Legal system

5 | Describe the general legal system in your country.

Peru is a democratic constitutional republic based in presidentialism and the civil law system. Under the 1993 Constitution, the president is both Chief of State and Head of Government. Peru is a unified and centralised state organised by the principle of the division of powers, composed by the executive, judicial and legislative branches. The president, the president of the council of ministers and the ministers forms the executive branch. A unicameral congress, elected for five-year periods, provides the legislative branch with 130 members and approves laws. There are different methods for a bill to become law. The executive branch of government can propose a bill, by signed petitions from the public and by congress itself. After being proposed, a bill passes to a committee, which amends and votes on it; and, if approved by the committee, the bill must be voted in congress and, if approved, it goes to the president for signing or vetoing. Vetoes can be overwritten by a three-quarter majority vote in congress. After this process, the bill must be published in the Official Gazette to be considered enacted.

The judiciary has earned a bad reputation in the country; the judicial procedures are, in general, filled with formalities and there are not enough judges. This combination means that a civil judicial procedure, where property or contractual rights are disputed, could last many years until a final decision is taken. In light of this, big business has turned to commercial arbitration in order to solve contractual disputes. Public companies or entities also resort to private arbitration courts. Arbitration courts are ad-hoc and tend to solve each case in less than a year, although arbitration fees are high and this could somehow push private companies to a negotiated solution. Foreign judgments and awards must follow a recognition procedure before the judiciary before being executed.

The anti-corruption legislation has been hardened as of 2018. Law No. 30424 and its modification, Legislative Decree No. 1352, have introduced the administrative liability (in addition to criminal liability for company officers) for companies for the crimes of corruption, money laundering and terrorism financing within the framework of the development of its activities. In order to prevent or reduce sanctions the companies must comply with a compliance programme that would be evaluated by the prosecutor or the judiciary before imposing the sanction.

REGULATION OVERVIEW

Legal framework for oil regulation

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

According to the Peruvian Constitution, natural resources are patrimony of the nation and the Peruvian state has a sovereign right to its exploitation. In 1993, Law No. 26221 was enacted, becoming the Organic Hydrocarbon Law (OHL).

The OHL created the contracting agency Perupetro SA as a spin-off from NOC Petroperu. Perupetro SA is charged with the responsibility of promoting, contracting and overseeing the exploration and exploitation activities countrywide. For these purposes, Perupetro SA is entitled to sign licence or services contracts for exploration activities, including technical evaluation agreements, with oil companies. The rights conferred by the licence or services contracts does only confer the authorisation to conduct the activity, and if successful, acquire the property of the extracted resources (licence) or be paid (with production) for the conduct in the case of a services contract. Oil companies are conferred with a free availability right for the discovered resources belonging to them.

The exploration phase could last up to 10 years and the right to enter into the exploitation phase belongs to the oil company. The exploitation phase may last up to 30 years for oil 40 years for natural gas. It is important to note that an amendment project is to set the maximum length at 40 years for both oil and natural gas with the right to extend it for 20 more years, depending on certain conditions. At the end of the exploitation phase, the oil company must transfer the then operating facilities free of charge to Perupetro SA.

Perupetro SA may enter the exploration or exploitation contracts through tender processes of direct negotiations. Oil companies need to attest their technical and financial credentials in order to subscribe to such a contract or to acquire a participating interest. Oil companies that fail to attest the technical experience may secure their participation by demonstrating their association with a technical qualified operator.

Licence or services contracts do not confer surface rights or environmental permits automatically; hence, oil companies need to follow special legal procedures to obtain them.

The OHL also rules in general terms on the pipeline, transport, natural gas distribution, refining and the marketing of hydrocarbon activities. A group of regulations enacted under the OHL addresses mostly the technical aspects for exploration and exploitation, storage, safety, refining, environmental and the marketing aspects. The regulations aimed at hydrocarbons transportation and natural gas distribution also depict the legal framework related to the granting of the concession rights.

Expropriation of licensee interest

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

The OHL provides that companies engaged in oil exploration and production, hydrocarbons pipeline transportation and natural gas network distribution could ask the Ministry of Energy and Mines for the expropriation of private property. However, the regulations approved under the OHL for exploration and exploitation, pipeline transportation and natural gas network distribution provides a procedure that grants forced administrative easement, and surface rights as may be needed for the companies' activities that would apply in case of failure to reach an agreed easement or surface right with the incumbent landowner.

Most oil companies even resort into this administrative easement or surface-right system as a last resort when failing to agree the use of the land with the owner; or they may even prefer to acquire the necessary plots of land when the hydrocarbon facility prevents any economic use of the affected plot of land because of its favourable location.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

The government may not unilaterally revoke or amend a licence contract unless an event of contractually agreed termination event occurs. The events that give rise to automatic termination are clearly depicted in the licence or service contract models employed by Perupetro SA.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The Ministry of Energy and Mines of Peru is part of the executive branch and is responsible for proposing, elaborating and approving the policy of the hydrocarbons, mining and power sector, as well as responsible to dictate the pertinent regulations. The Ministry of Energy and Mines also has the competence for granting concession rights and executing the concession contracts with companies engaged in hydrocarbons pipeline transportation or natural gas distribution. It also grants the administrative surface rights required for hydrocarbon activities.

Perupetro SA was created by the OHL and has the function of promoting the investment in exploration and exploitation in hydrocarbons. As well as negotiating the exploration or exploitation contracts, collect the royalties and oversee the compliance of the oil companies' obligations.

The NOC Petroperu operates as an integrated oil company with no government competence or privilege.

The Supervisory Organism of Investment in Energy and Mining Activities (OSINERGMIN) is an autonomous regulatory body responsible for supervising the compliance of the regulations applicable to oil and gas activities, in particular to those associated with technical and security issues as well as responsible for approving the pipeline transportation and natural gas distribution tariffs. The OSINERGMIN also grants the favourable technical opinions for hydrocarbons facilities. The OSINERGMIN is entitled to start administrative sanctioning procedures in case, during its inspections, it detects breaches to applicable regulations as well as to impose fines and administrative orders suspending or halting operations on security-risk grounds.

The Agency for Environmental Assessment and Control (OEFA) is a public and technically specialised entity attached to the Ministry of the Environment; it is in charge of environmental supervision and control for all economic activities in Peru among them, oil and gas activities. The OEFA is an environmental supervisory entity and can impose sanctions to those responsible for breaching environmental regulations as well as the commitment assumed in the applicable environmental management instruments such as impact studies for new activities or abandonment plans.

The National Service for Environmental Certification (SENACE) is a public and technically specialised entity attached to the Ministry of the Environment and is responsible for reviewing and approving the Environmental Impact Studies for huge impact private or public investment projects.

Government statistics

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

The Ministry of Energy and Mines.

NATURAL RESOURCES

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

As per the Peruvian Constitution, oil reservoirs are patrimony of the nation. The exploration or exploitation contracts do not confer surface rights hence, usually, the oil exploration areas are granted over private and public lands and once the oil company determines the area necessary for the conduction of the operations it may resort into the administrative easement of surface rights procedures that the regulation under the OHL allows them. Only certain public areas are restricted for oil activities, as is the case for certain categories of natural reserve areas. It may also be considered that Peru is part of the International Labour Organization (ILO) Convention 169 so, in case the prospective exploration or exploitation area overlaps an indigenous territory, a prior consultation procedure must be conducted before the execution of the respective contract. The entity in charge of conducting the consultation procedure on the side of the government is the Ministry of Energy and Mines.

The title over the oil is transferred upon its extraction to the contractor of a licence contract for the exploration or exploitation of hydrocarbons.

Exploration and production – general

12 | 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 exploitation can be developed in any part of the territory that has the potential to holds reservoirs. The lack of appropriate infrastructure and geographical conditions may work as a natural restraint in case of activities in the Amazon jungle basins far from transportation means or from markets.

Oil activities may not be conducted in certain reserved areas, although in some of them, they may be conducted with utmost care as addressed in a relevant environmental impact study. Oil activities may also not be conducted in areas overlapping indigenous territories without conducting the prior consultation procedure under the ILO Convention 169. The Ministry of Culture keeps a record of the existing indigenous peoples within the country, and all of them are located in the Amazon jungle or in the Andean region.

For areas not overlapping indigenous territories, a procedure for Citizenship's Participation shall be conducted, which consists in mostly informing local communities and considering their concerns when implementing a project.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

As per the OHL, the rights to explore and produce hydrocarbons are granted through the subscription of a licence or services contracts with Perupetro SA. The OHL also provides that the Ministry of Energy and Mines may authorise additional contractual forms although since the approval of the OHL in 1993 no other contractual form has been employed. It is also feasible to subscribe to a Technical Evaluation Agreement (TEA) with Perupetro SA. in areas where there is little or no technical information or lack of transport infrastructure; upon completion of the committed studies, the evaluating company may have the option to negotiate and subscribe to a licence or services agreement.

Under a licence contract, the oil company is granted with the ownership of the discovered hydrocarbons and must pay a royalty as consideration. Under a services contract, the oil company is recompensed for its production services, usually paid with oil. Most exploration or exploitation contracts in Peru are licence contracts.

Legally, Perupetro SA may subscribe to such an exploration or exploitation contracts following a direct negotiation procedure or a bidding procedure. Since 2017, Perupetro SA resumed direct negotiations.

Direct negotiation can be carried out at the proposal of oil companies with respect to areas that, at the date of the request, are free and are not totally or partially included in blocks approved by Perupetro SA for competitive bidding processes.

In order for oil companies to apply for direct negotiations or participate in a bidding process they must be first qualified by Perupetro SA attesting their technical experience and their financial capacity to assume the minimum work committed. The qualification process may last two weeks in case all needed documentation is submitted and the direct negotiations are supposed to last 30 days. No fee payment is necessary to subscribe to such a contract over an exploration area, although in the case of previous blocks in operation, Perupetro SA has requested a payment for the existing facilities.

In principle, Perupetro SA is only amenable to negotiate the minimum work programme and the royalties for a certain contract, although it admits some adjustment to other provisions when there are legal arguments to do so.

Government participation

14 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 principle, neither the government nor NOC Petroperu have any special right or privilege to participate in a licence or services agreements. The by-laws of Petroperu allow it to participate in upstream activities.

Although previous governments have shown some ambiguity with respect to this participation and the Ministry of Finance has made some objections, Petroperu now has a 25 per cent share in Block 64 that holds proven although yet-to-be-developed reserves. There is a law approved by congress that mandates its participation in Block 192, which is now in full production on a temporary services agreement. In the case of Block 64, Petroperu's share of the investments is carried up to a certain investment amount by its partner and the proceeds from production would be used to repaid this.

Royalties and tax stabilisation

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

As with the OHL in the case of licences, oil companies must pay a royalty over the produced hydrocarbons that are to be valued as per the ad hoc valorisation and payment mechanisms to be agreed in each contract.

In 1993, Supreme Decree No. 049-93-EM approved the regulations for the application of the royalties and retributions under the OHL. These regulations established a 15 per cent minimum royalty.

In 2003, Supreme Decree No. 017-2003-EM approved additional methodologies to determine royalties in licence contracts for the new contracts, as well as for those already subscribed but still in the exploration phase and established a minimum royalty of 5 per cent. The additional methodologies considered by this supreme decree are the production scales and the economic results.

The production scales methodology considers the following percentages from million barrels per day (Mmbbl/d) production:

- less than 5Mmbbl/d – 5 per cent royalty;
- five to 100Mmbbl/d – 5 to 20 per cent royalty; and
- more than 100Mmbbl/d – 20 per cent royalty.

For the economic results methodology, the fixed royalty is 5 per cent and the variable royalty could go up to 20 per cent depending on the 'r' factor value that shall be calculated as per the regulations in Supreme Decree No 049-93-EM. The 'r' factor considers historic investments and revenues.

The tax regime in force on the date of the subscription of an exploration or exploitation contract is stabilised. The income-tax rate must consider two additional points as the consideration for the tax stability. The tax stability extends to the shareholders or parent companies for the dividends they may obtain from their investment.

Licence duration

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

The OHL sets a maximum duration of 30 years for oil and 40 years for natural gas.

This term does not include retention or force majeure periods or the term needed to obtain environmental impact studies approval that also give right to halt the contractual term.

Extent of offshore regulation

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

Peru's territorial waters extend up to 200 miles from the coastline and the regulatory regime extends to that boundary.

Onshore offshore regimes

18 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 in regimes for onshore or offshore activities. Newly approved environmental regulations for hydrocarbons activities include a number of features specifically aimed at facilitating offshore activities,

In case of contracts granted with proven natural gas reserves, the government may set the obligation to feed the domestic market before exporting. This obligation does not exist for natural gas discovered after exploration activities in a certain area.

Peru has no special regime for shale gas or oil.

Authorised E&P entities

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

Any natural or legal, national or foreign entity may enter into an exploration production contract with Perupetro SA to the extent that it meets the established minimum qualification parameters.

Under the approved qualification parameters, oil companies need to attest that they are legally, technically and financially capable of conducting the minimum work obligations at least until the drilling of one exploration well.

For the execution of exploration or exploitation contracts, the qualified foreign oil companies must establish a legal entity in Peru (a branch or a corporation) fix a domicile in Lima and appoint a Peruvian individual as a 'national mandatary'. The qualified oil company shall serve as the corporate guarantor for the fulfilment of the contractual obligations assumed by its formed Peruvian legal entity.

The registration of a legal entity in Peru could last from 15 days to a couple of months, depending on the alternatives that may choose the foreign oil company to expedite the procedure. Considering legal counsel fees, administrative registry fees and translation fees the cost could be between US$4,000 or US$5,000.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

The contractor oil company is the sole body responsible for the conduction of the operations. Perupetro SA consent is required only in certain circumstances such as for abandoning a well, considering the minimum work obligation as fulfilled even when targeted depth has not been reached or for conducting operations outside the contract area. Perupetro SA must also approve the retention of a discovery for lack of transport means or market (in the case of oil and natural gas). On the other hand, the declaration of commerciality belongs exclusively to the contractor and Perupetro SA can only make comments to the development plan and eventually object to the planned date for starting commercial production.

The decision to revoke operatorship does not fall under Perupetro SA competences; however, the companies making up a joint operating agreement are all joint and severally liable before Perupetro SA for the obligations under the exploration or exploitation contract.

As for the Supervisory Organism of Investment in Energy and Mining Activities and the Agency for Environmental Assessment and Control, although their function is just to control the compliance of security and environmental legal compromises, when imposing some administrative measures such as the closure of certain facilities or suspension of the operations they indirectly affect the course of the operations.

Joint ventures

21 | What is the legal regime for joint ventures?

Joint ventures do not form a legal entity separated from its members for civil and commercial law purposes in Peru. In the case of exploration or exploitation contracts there is a provision in the model of contract employed by Perupetro SA stating that all the members of a joint venture and jointly are severally liable before it for all the assumed contractual obligations. Oil companies making up a contractor in an exploration or exploitation contract must provide Perupetro SA with a copy of their joint operating agreement and of any subsequent amendment to it.

Under OHL qualification regulations, each member of a joint venture must meet the qualification requirements. If one of them does not meet the technical experience requirements, it could qualify but not assume the position as operator. A non-operator shall also incorporate a local entity, subscribe to such a contract and their parent shall back their obligations with a corporate guarantee.

As per Perupetro SA's contract model, it shall only liaise with the operator during the life of the contract. Non-operators must solely provide annually their audited financial statements and of course communicate any modification to their participating interest. All permits and authorisations needed for the operations shall be made in the head of the operator.

From a tax perspective, the joint venture does not create a taxpayer; each of the members shall calculate and pay its own taxes. The joint venture member shall communicate to the tax administration their participating interest and who will be the member acting as operator as all the purchases of goods and services shall be made in the head of the operator. The operator shall then issue allocation notes in order to transfer the share of the investment to each non-operator partner. However, the sale of the production shall be invoiced separately.

Reservoir unitisation

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

The contractors of each area shall negotiate and enter into a joint exploitation agreement. If an agreement is not reached, the Ministry of Energy and Mines will arrange the submission of the differences before a Technical Conciliation Committee and its resolution will be mandatory. If the contiguous area reservoir is not under any contract and there are no existing environmental limitations, the contractor may present a request to Perupetro to include those areas in the contract area.

Cross-border reservoirs are not addressed in Peruvian legislation.

Licensee liability

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

In the case of joint ventures acting as the contractor, each of its members is joint and severally liable before Perupetro SA for the fulfilment of the agreed contractual obligations.

In the exploration phase, the minimum work programme is the main obligation and this obligation needs to be backed by bank security that represents a share of a theoretical investment. The model of contract employed by Perupetro SA includes a provision stating that if a contractor fails to execute the minimum work programme commitment, the execution of the security shall be the maximum liability to be assumed in this respect.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

The contractual obligations assumed by the local entity formed by the oil company and that will be the part in the exploration or exploitation contract shall be backed at all times by a corporate guarantee. Corporate

guarantees shall be granted by the ultimate parent company or by the company in the group that has been presented to meet the qualification requisites. Parent companies are theoretically unlimited but to the extent they back contractual obligations, the assumed contractual obligations shall work as the limit. It is important to consider that in Peru a minimum work and not a minimum investment requirement exists.

Securities are required in the form of a bank bond issued by a local bank to back the compliance of every work programme commitment assumed in the exploration phase.

There is no security needed for development or during the production phase.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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

Companies in Peru are not legally bound to buy local equipment or to use a minimum amount of locally sourced services and, or goods.

The model contract states that at the end of the fifth year, counted from the commencement of commercial production, the contractor shall have replaced all its foreign personnel by Peruvian personnel with equivalent professional qualifications. However, foreign personnel in management positions and those necessary for specialised technical work are exempted from this obligation and there is a historically flexible criterion towards the fulfilment of this obligation.

Social programmes

26 | Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

There is no legal obligation in Peruvian law that states there must be a payment for social programmes by the contractor.

However, it is common practice to implement social responsibility projects in the area neighbouring the project.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 | 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 participating interests from one party to another or to a third party must be notified to Perupetro for its approval. The notice must also be accompanied by a request of qualification as an oil company by the proposed transferee. Once the transferee is qualified, a procedure to amend the contract is triggered. It requires Perupetro's board approval and the participation of the Ministry of Energy and Mines through an authoritative supreme decree. The procedure could take at least three months.

There is no contractual provision for reorganisations or changes of control. However, if such a procedure ends with the replacement of the corporate guarantor a procedure to amend the contract shall be initiated.

There are no legal pre-emptive rights reserved for government companies or agencies.

Approval to change operator

28 | Is government consent required for a change of operator?

Yes.

Transfer fees

29 | 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 aimed at the transfer or the change in control in an exploration or exploitation contract.

General income tax rules shall be considered for any capital gain made when transferring a participating interest or transferring shares of a local entity. As for VAT, there is no specific rule pertaining the transfer of a participating interest in a contract and the local market is divided as to its application.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

During the life of a licence or a services agreement, the contractor is the single entity responsible for all investment and as such, the owner of all the required facilities.

At the termination of an exploration or exploitation contract the contractor shall hand over to Perupetro SA (unless not required) all buildings, energy facilities, base camps, means of communication, pipelines and other production assets belonging to the contractor, which will allow the operations to continue at no cost. The assets must be handed over in good condition and in working order, taking into account fair wear and tear.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 | 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?

Abandonment and decommissioning procedures are governed by the respective exploration or exploitation contract, by the OHL and by the regulations issued under the latter; especially the exploration and exploitation and the environmental regulations.

In existence is the general obligation of submitting a partial abandonment plan for each facility that ceases to operate for more than one year. Perupetro SA must previously approve the abandonment of wells. In the case of pipelines installed underground there is no removal obligation as long as its operator could attest the elimination of any potential hazard (eg, elimination of gases).

In the case of a complete abandonment of activities, five years prior to the expiration of the contract, the contractor must present a final abandonment plan for approval. The fulfilment of the decommissioning, cleaning and restoration works included in the plan must be guaranteed by a security equivalent to 75 per cent of the total estimated value for those works. In the case of a termination of a contract that has not reached the exploitation phase, a complete abandonment plan shall also

be submitted and its obligations must be secured in the same form as described in this paragraph.

In case of a joint venture, the operator would be the single responsible entity before Perupetro SA and the regulators.

Security deposits for decommissioning

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

Peruvian legislation does not regulate specifically future decommissioning liabilities but only as part of a partial or complete abandonment plan. The security for the abandonment plan has the form of a bank calculated bond.

TRANSPORTATION

Regulation

33 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 hydrocarbons is ruled by the OHL and by the regulations issued under it for pipeline transportation and for commercialisation (vessels and trucks).

The contractors of an exploration or exploitation contract have the right to build a pipeline under their contract umbrella and enjoy a right for the pipeline exclusive use for five years that then turns into a preferential right.

The business of hydrocarbons pipeline transportation requires the granting of a concession by the Ministry of Energy and Mines. The transportation tariffs need to be approved by the OSINERGMIN. In the case of natural gas, the pipeline capacity needs to be offered in periodical public tenders. There are no transboundary pipelines linking Peru to its neighbours, although there have been proposals for linking the North Peruvian Pipeline with some Ecuadorian fields and even of exporting Bolivian gas through a Peruvian port.

The export of crude oil or natural gas needs no special permit.

In the case of marine vessels, the Port Authority and the Peruvian Navy also have competence, and in the case of tanker-truck transportation, the Ministry of Transports is also competent for the use of those vehicles on the highways. It is worth noting that there are several cities within the country served by compressed natural gas and LNG trucks.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Peruvian legislation does not contemplate production-sharing contracts.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

Regarding the health and safety requirements, the stated activities must comply with the safety regulations for hydrocarbon activities issued under the OHL. According to them, the contractor must elaborate and submit for approval a risk study as well as a contingency plan addressing the particular characteristics of their facilities. When elaborating these documents, it must also consider the applicable international standards such as API, ANSI, ASME, etc, that are expressly mentioned as applicable in Peru in the regulations issued under the OHL for different activities such as upstream, pipeline transportation, tanking storage, refining, marketing, etc.

Regarding environmental requirements, all upstream-related operations (onshore and offshore) must comply with the regulations for environmental protection issued under the OHL. Prior to beginning any activity, the contractor needs to file an environmental impact study for approval. The environmental impact study includes a base-line study of the environment, a detailed description of the proposed activity and a list of the expected impacts as well as the measures and compromises to minimise them.

The Supervisory Organism of Investment in Energy and Mining Activities oversees the compliance of health and safety obligations, and the Agency for Environmental Assessment and Control those related to the environment. Both entities conduct periodic inspection visits and in the case of findings are entitled to start administrative sanctioning procedures and eventually impose fines.

The statute of limitations for administrative responsibility is five years; hence, companies must keep all records for maintenance activities, personnel safety education, etc for at least this period of time.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The applicable employment laws provide that no more than 20 per cent of the workers in a company payroll may be expatriate workers and that their salaries shall not in total amount to more than 30 per cent of the payroll value. These limits do not count for personnel in management positions or for highly skilled workers.

On the other hand, it is common that the environmental impact studies, as they also address social issues, include the compromise for hiring the unskilled workforce from the communities surrounding the project; especially for construction or for environmental monitoring.

The exploration or exploitation contract includes an annual training-fund payment. The annual contribution amounts to US$50,000 per contract during the exploration phase and after production, it could amount to US$180,000 for the production of over 50,000 barrels per day.

The expatriate workers need to have their employment contracts approved by the Ministry of Labour and afterwards apply for a workers' visa with the immigration bureau. The procedure could last up to three months. Expatriate workers must attest their qualification and experience.

The Peruvian Constitution forbids any type of discrimination; however, there are no quotas for women or for minorities. When the payroll exceeds 50 people, the companies must offer at least 3 per cent of the positions to disabled persons to the extent they are suitable for the work.

The penalties for non-compliance of these labour regulations are fines, which will be applied depending on the severity of the transgression – slight, severe and highly severe. The number of workers affected by the given breach is considered as well.

TAXATION

Tax regimes

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

Exploration or exploitation contracts grant the contractor with a tax stability regime that freezes the regime applicable on the date of the contract execution. In the case of income tax, two additional points should be added to the then applicable rate as a consideration for the stability.

The tax stability is also enjoyed by the parent company of shareholders of the local entity for the profit produced from the contract activities.

During the exploration phase, the contractor could ask for the refunding of the VAT levied to its local purchases and imports.

The operators of LNG plants enjoy a tax stability regime similar to that of the upstream in Peru.

The concessionaires of pipelines and natural gas distribution grids have the right to enter into special tax stability agreements for the length of its concession.

Other hydrocarbon activities do not enjoy a special tax stability regime but can resort to the special benefits granted to important investment projects depending on the amount of its investment.

The tax and customs authority is the National Superintendence of Customs and Tax Administration (SUNAT).

COMMODITY PRICE CONTROLS

Crude oil mining

38 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 could be sold locally or exported at international prices.

For the sale of oil, products such as diesel or petrol in the local market the government created a fund for the stabilisation of the prices of fuels, aimed at mitigating the volatility of the external commodities market.

As per the fund regulations, the Supervisory Organism of Investment in Energy and Mining Activities shall publish referential prices for the importation of fuel products considering, as a benchmark, the Gulf Coast of the United States, plus efficient management costs but excluding marketing margins.

COMPETITION

Competition enforcers

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

The agency in charge of fair competitive standards in all matters (including hydrocarbons) is the National Institute for the Defence of the Competition and the Intellectual Property (INDECOPI).

INDECOPI is a specialised public entity ascribed to the Presidency of the Council of Ministers with the faculty of supervising the compliance of all anticompetitive legislation, including the Law for Repression of Anti-Competitive Practices, being able to initiate sanctioning administrative proceedings, which may take about 200 working days. The sanctions range from corrective measures to fines, according to the damage the market received because of the anticompetitive conducts.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

Sanctioning administrative proceedings may take about 200 working days. The sanctions range from corrective measures to fines, according to the damage the market received because of the anticompetitive conducts.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

The contractor is the holder to the seismic data collected during the contract. However, the contractor shall keep Perupetro SA permanently, promptly and regularly informed regarding the operations, providing all obtained information. The contractor has the right to use such information and data for the purposes of reporting to other authorities, as well as to prepare and publish reports or studies using it.

Perupetro SA has the right to publish any information related to geological, scientific or technical data referred to the areas relinquished by the contractor, and in case of information that is related to areas still in operation, Perupetro SA, may publish the information two years after receipts or before, if it is agreed with the contractor.

INTERNATIONAL

Treaties

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

Under the Constitution, international treaties that have been ratified by the president are considered governing law in Peru; however, there are no treaties concerning Peru's hydrocarbons policy.

The exploration or exploitation contracts include international arbitration clauses mostly with International Centre for Settlement of Investment Disputes' rules. Since its creation in 1993, Perupetro SA has abided by the agreed dispute resolution clauses.

Moreover, Peru is signatory to several bilateral investment treaties and free trade agreements that include dispute resolution clauses for their national investors.

Foreign ownership

43 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?

There are no limitations for the acquisition of oil related interest by foreign companies or individuals other than those related to attesting its technical experience and financial capacity as per the qualification regulations issued under the Organic Hydrocarbon Law. Foreign oil companies must form a local subsidiary or a branch in the case of acquiring an interest in an exploration or exploitation contract.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

There is no restriction for cross-border sales or delivery of crude oil products. Volumetric supply obligations apply for the commercialisation of fuel and the burden is currently in the head of the trader who, at all times, must keep an inventory equivalent to five days' consumption in each storage facility.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

The main topics for discussion in Peru's oil and gas business concern pipelines. The Nor Peruano Pipeline, dating from the 1970s, transports oil and gas from the Peruvian Northern Jungle to the Pacific Coast, has suffered numerous ruptures in recent years, most of them derived from alleged sabotage by local communities. Each rupture means disruption to neighbouring fields and creates animosity towards oil activity across the region. NOC Petroperu, the pipeline's operator, needs to embark on a technical integrity and security strategy to build confidence among all participants.

The cancelled Gasoducto Sur Peruano project was supposed to bring natural gas from the Camisea fields to the Peruvian South but was cancelled because its operator, Odebrecht, failed to secure financing in time. The Peruvian government is to confirm whether the original plans are still fit for purpose before holding an auction to complete the project's construction and operation.

Local players are betting on amendments to the OHL, especially those players whose exploration contracts are due to expire within the next five years. It is widely agreed that keeping current operators in existing production areas is convenient.

Exploration areas continue to lure investors, most of whom are either acquiring technical information or subscribing technical evaluation agreements with Perupetro SA. Areas of special interest are located offshore with potential deep-water concessions, or on the eastern slopes of the Andean mountain range.

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GENERAL

Key commercial aspects

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

The picture of the Senegalese oil sector changed radically when Cairn Energy made two exploration successes in 2014. First, the FAN-1 well, drilled to a water depth of 1,430 metres, reached a reservoir initially estimated to contain 330MMBbl of oil; and second, the SNE-1 well, drilled to a water depth of 1,000 metres, reached a reservoir estimated to contain a range of contingent oil resources from 270MMBbl to more than 900MMBbl.

Other exploration activities in Senegal include FAR's funding of a 3D survey in the Djiffere block, adjacent to the Rufisque, Sangomar and Sangomar Deep blocks in exchange for the farm-in option.

T5 Oil and Gas, which, through its acquisition of Blackstairs Energy Senegal, obtained a 10,000 square-mile production sharing agreement in the onshore Louga Block. T5 holds a 90 per cent initial working interest in the block, with the remaining 10 per cent held by the Société des Pétroles du Senegal (Petrosen), Senegal's national oil company.

Oryx Petroleum is conducting a variety of exploration activity in the AGC Shallow and AGC Central blocks, which are situated in joint petroleum exploitation zones established by Senegal and Guinea-Bissau.

Total has entered upstream oil with the signature of two agreements with the government concerning the exploration and production of hydrocarbons in deep offshore and very deep offshore in 2017.

Energy mix

2 | What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

Biomass represents the largest percentage with 58 per cent, followed by oil products (38 per cent), coal (3 per cent), hydro (1 per cent), natural gas (0.03 per cent) and solar (0.01 per cent).

Senelec, the national electricity company, has its own fleet that is exclusively thermal and the dominant fuel is fuel oil, up to 90 per cent. In terms of the road transport sector, it can be seen that diesel consumption is superior to that of petrol.

Government policy

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

The Senegalese government has made power sector development a key component of its Plan Senegal Emergent, which aims to make Senegal an emerging economy by 2025. Priorities include lowering the cost of generation by reducing dependence on imported liquid fuels and increasing electricity access – in particular in rural areas. Senegal has significant potential to develop solar and wind power – as well as the opportunity to develop its offshore natural gas resources. The government aims to achieve universal access by 2025 through a combination of on- and off-grid solutions, although the country's rural concessions programme faces significant hurdles.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

A clear distinction must be made between upstream oil and downstream oil. In the upstream oil sector, there is no publicly available register for licences and licensees. However, there is a publicly available register for licences and licensees in the downstream oil sector, which is free from the Directorate of Hydrocarbons. None of the data is electronic and some documents may be granted following application.

The oilfield register is maintained by the Directorate of Hydrocarbons and Petrosen. Further, a new law is under consideration to establish a separate register for beneficial ownership. This register will be hosted and managed by the Registre du Commerce et du Crédit Mobilier at the Tribunal de Grande Instance of Dakar.

Legal system

5 | Describe the general legal system in your country.

The judicial system in Senegal is based on, and inspired by, the French civil code.

The government and its officials and agents, including individuals and private entities, are accountable under the law. Laws are clear, publicised, stable and just; they are evenly applied and protect fundamental rights, including the security of persons and property.

By and large, the process by which the laws are enacted, administered, and enforced is accessible, fair and efficient. Justice is delivered in a timely manner by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources and reflect the make-up of the communities they serve.

Senegal is ranked 141 in the world for enforcing contracts (World Bank Doing Business 2018).

Property rights are generally guaranteed and well respected in urban areas. In rural areas, land registration procedures are slow and uncertain and land titles are based on traditional rules. The legal defence of property rights is unsatisfactory owing to shortcomings in the judiciary, including a lack of trained judges, which has led to arbitrary and inconsistent judgments. The Senegalese government has developed a new model to resolve conflicts between customary tenure and formal land ownership; but, to date, they have not been widely implemented.

Senegalese law allows for expropriation through the use of eminent domain justifications, provided that compensation is paid to landowners.

According to article 30 of the OHADA Uniform Act on Arbitration, recognition and enforcement of an arbitral award can only be made by way of exequatur, whereby a summary judgment is rendered by the local court where enforcement is sought.

Foreign arbitration awards are recognised and enforced according to the relevant provisions of the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards 1958 (New York Convention), to which Senegal is a party. The grounds for opposing enforcement are the same as the limited grounds set out in the New York Convention, including the absence of a valid arbitration agreement, improper composition of the tribunal, an ultra petita decision of the tribunal, a violation of public policy, etc.

Once the application to oppose enforcement is filed, the court may decide to stay enforcement pending its determination of that application. In such a case, there is no way to obtain leave to enforce.

Corruption poses moderate-to-high risks in most sectors in Senegal, with bribery and petty corruption being particularly common. Senegal's anti-corruption law is primarily contained in the Penal Code, which criminalises extortion, active and passive bribery, bribing foreign officials and money laundering, as well as private-to-private corruption.

Senegal joined the Extractive Industries Transparency Initiative (EITI) in 2014 and is set to be evaluated against the standard. As part of this effort, Senegal introduced a new Mining Code in 2016, which aims to improve the transparency of the ongoing Petroleum Code reform. Senegal has announced it will publish a list of beneficial ownership as part of EITI by 2020. Large oil and gas reserves were discovered but concerns about the readiness of the country to exploit these in a transparent and beneficial way are widespread. Further, Senegal is party to the African Convention on Preventing and Combating Corruption as well as the United Nations Convention on Fighting Corruption. The National Office to Combat Fraud and Corruption has been created to implement the above-mentioned corruption related legal instruments.

REGULATION OVERVIEW

Legal framework for oil regulation

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

The regulatory framework of Senegal is constituted by:

- Act No. 01-2019 relating to the Petroleum Code;
- Act No.02-2019 relating to the local content in the oil and gas sector;
- the Decree approving the Production Share Contract (the Permit); and
- the Joint Operating Agreement approved by the minister in charge of oil and gas.

After adoption of the new Petroleum Code, other future regulations will be promulgated.

Expropriation of licensee interest

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

In Senegal, there is only expropriation for public purposes, which is governed by Act No. 76-67 of 2 July 1976. Expropriation must be justified by a public purpose duly acknowledged by decree. The relevant law provides for a judicial review of the expropriation decision and compensation of the person(s) expropriated. Expropriation is subject to the payment of a just compensation.

Until now, there have been no legislative provisions that allow for the expropriation of a licensee's interest.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

Pursuant to the provisions of the Petroleum Code, a licence shall be revoked in case of:

- violation of the provisions of the Petroleum Code or any regulation in force relating to petroleum operations;
- liquidation of property or judicial settlement of the company holding the petroleum permit or the parent companies; and
- failure to comply with the provisions of the petroleum contracts when, under the terms of these contracts, their violation results in termination.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The government body principally responsible for regulating oil exploration and production activities is the Ministry of Oil and Energies. There is also Petrosen and the National Council of Hydrocarbons under the authority of the Ministry. Petrosen is the national oil company of Senegal.

Pending reform of the sector's legal and institutional framework, Petrosen and the Directorate of Hydrocarbons continue to serve as regulatory and oversight bodies.

In October 2016, the President established by Decree COS-PETROGAZ to provide strategic guidance as well as to define and oversee policies regarding hydrocarbon development. COS-PETROGAZ is embedded within the President's Office.

Another body, GES-PETROGAZ, is responsible for the implementation of the deliberations of COS-PETROGAZ.

Violations of the provisions of the Petroleum Code are sanctioned with a fine ranging from US$1 million to US$20 million, without prejudice to penalties provided in other applicable laws. In repeat offence cases, the fine shall be doubled.

Government statistics

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

The national agency of statistics and demography. This agency is placed under the authority of the Ministry of Finance.

NATURAL RESOURCES

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

In accordance with the new provisions of the Senegalese constitution, natural resources belong to the Senegalese people.

Unless prior authorisation of the competent authority is granted, no petroleum contract holder can occupy or carry out oil operations on the following grounds:

- any property located less than 200 metres from a cemetery, church, mosque or other building or site used for religious or cultural purposes;

- any land within 100 metres of dwellings, buildings, tanks, streets, roads, railways, water pipes, drains and, generally, around any work of public utility and works of art;
- any property located within 1,000 metres of a border, airport, aerodrome or security establishment; or
- any terrain declared as a military domain, or a classified domain, in particular a nature reserve, a national park and hunting areas.

Surface rights are exercised with prospecting authorisation.

Prospecting is defined as the set of systematic and itinerant surface investigations by geological, geophysical or other methods.

The subsurface mineral rights are exercised with an exploration permit, a temporary operating permit or an exclusive operating permit. These permits require their holders to perform the works in depth.

In accordance with the Petroleum Code, the holder of the exploration permit may dispose of hydrocarbons extracted from the subsoil during research and the production tests relating to such research.

Exploration and production – general

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

In Senegal, the relevant oil and gas operations include the prospection, exploration, development, exploitation, transportation, storage of hydrocarbons and liquefaction of natural gas throughout the national territory. Any of these activities requires an authorisation by the relevant public entity, generally the national regulator.

For reasons of public interest, including public policy, national security and public health, some areas may be closed to oil operations by decree.

Subject to the rights acquired by holders of hydrocarbon mining rights, oil operations in certain areas of Senegal may be prohibited by order of the Minister of Hydrocarbons.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

For hydrocarbon exploration and production activities, the granting instruments are as follows:

- a prospecting authorisation;
- an exploration permit;
- a temporary operating permit; and
- an exclusive operating permit.

Under the new Petroleum Law, the application procedure for the granting of the rights is fixed by decree. The new implementing regulations are yet to be provided for by the government. This should be done during the course of the promulgation of the presidential decree implementing the new petroleum legislation.

After examination of the licence applications, the Minister may request complementary information from the applicant or invite her or him to Dakar for negotiations if the application is considered satisfied. Grant terms and conditions are negotiable except those pertaining to environment, health and security. Negotiations with a successful applicant are concluded by signature of a concession contract or a PSC between the Minister in charge of hydrocarbons and the applicant.

Government participation

14 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?

Yes. The state, either directly or through a state company, reserves the right to participate in all or part of the petroleum operations, by entering into partnerships with the holders of hydrocarbon exploitation licences or service contracts. The conditions of participation will then be specified in the PSC attached to the hydrocarbon exploitation licence concerned. The maximum carried participating interest is 10 per cent.

The maximum participating interest of Petrosen can be increased from 10 per cent to 20 per cent during the development and exploitation periods. This maximum participating interest is not mandatory, it is an option.

In the event of hydrocarbons production based on the contract area, the contractor shall have the right to receive free of charge, each year, in view of the recovery of its oil producer costs, a maximum share of the production of the contract area that has not been lost or used for the needs of the oil operations.

If, during a year, the maximum value of the production share determined is greater than the oil producer costs to be recovered during that year, the contractor shall receive only such lesser percentage of the production which is necessary and sufficient to recover the oil producer costs.

However, with the adoption of the new Petroleum Code, the mechanism could be amended.

Provided that the NOC has the required technical capacity for co-operatorship, the government has the right to participate in the operatorship of a licence.

Further, the state reserves the right to undertake oil operations:

- through the national oil company acting alone or in association with third parties under a contract; or
- through one or more legal entities under Senegalese or foreign law, authorised in accordance with the regulations in force.

Royalties and tax stabilisation

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

The royalty rates applicable to the productions of crude oil or natural gas are determined as follows:

- liquid hydrocarbons exploited onshore – 10 per cent;
- liquid hydrocarbons exploited shallow offshore – 9 per cent;
- liquid hydrocarbons exploited deep offshore – 8 per cent;
- liquid hydrocarbons exploited ultra-deep offshore – 7 per cent; and
- gaseous hydrocarbons exploited onshore, offshore shallow, deep offshore, ultra-deep offshore – 6 per cent.

The royalty is calculated from the total quantities of hydrocarbons produced in the zone of exploitation and not used in oil operations and differ between on- and offshore production.

The holder of an oil contract is subject to the payment of a signing bonus, for the benefit of the state, not recoverable for petroleum costs and corporation tax, the terms and conditions of which are laid down in the contract.

The holder of the exclusive operating licence is subject to the payment of a production bonus, not recoverable for petroleum costs and

corporation tax, the terms and conditions of which are set out in the production sharing agreement.

A petroleum contract may include a clause to stabilise the legislative and regulatory context on the date of entry into force, allowing contractors and the state, in the event that legal or regulatory provisions after the date of entry into force of the oil contract would upset its economic equilibrium, requiring either the non-application of financially aggravating provisions, or an adjustment of the contractual provisions likely to restore the initial economic balance.

Licence duration

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

During the period of validity of an exploration permit, the holder may, upon request, be authorised to temporarily exploit the producing wells for a maximum period of six months, during which the holder continues to delineate and develop the deposit.

The exclusive exploitation licence is granted to the holder for a maximum initial duration of 20 years. At the end of this initial period, it may be renewed once, by decree, at the request of the contractor, for an additional period of not more than 10 years.

Extent of offshore regulation

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

The territory of Senegal designates the onshore portion of Senegal, as well as its maritime areas that comprise the territorial waters and the continental shelf, as defined by the national law in accordance with the Convention of the United Nations on Maritime Rights, ratified by Senegal.

Onshore offshore regimes

18 | 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?

Yes. The Petroleum Code takes into account the specific characteristics of the exploration and exploitation of hydrocarbons in Senegal's onshore and offshore sedimentary basin.

The Petroleum Code governs both crude oil and gas. Regarding gaseous hydrocarbons, the Code takes into account the fact that their development may require greater investment and longer terms than for the development of liquid hydrocarbons.

Authorised E&P entities

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

Limited liability companies (LLC) and public limited companies (PLC) may perform exploration and production activities. But a branch may only perform exploration activities.

In practice, it is necessary to incorporate a subsidiary instead of registering a branch.

The incorporation of a PLC can be done within seven days when all documents are available and sent to the relevant administration.

If the incorporation is done on behalf of the company, the required documents include:

- a notarised memorandum of articles of association of the parent company;
- a translated and notarised memorandum of articles of association of the parent company;
- a notarised certificate of incorporation or commercial register extract of the parent company;
- a translated and notarised certificate of incorporation or commercial register extract of the parent company;
- the minutes that decided the subsidiary's creation;
- the minutes authorising the chairman of the board of directors to set up the branch power of attorney of the chairman that mandates setting up the Senegalese branch;
- the managers certificate of appointment;
- the original criminal record of the manager (if relevant);
- the manager's translated and notarised criminal record (if relevant); and
- a notarised copy of the manager's passport.

All documents should be notarised and translated into French (translated documents must be notarised). The procedure for establishing a subsidiary requires the cost including the basic fees and the disbursements.

There are no criteria and procedures. In practice, the PLC will be more credible than the LLC regarding third parties.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

In order to ensure the supervision, direction and control of the common operations provided in the joint operating agreement (JOA), an operations committee shall be established composed of the representatives of the parties, each party appointing a representative and a substitute. The management committee of the JOA and the operator must provide the national regulatory body with all information regarding their operations including any change of control. Failure to comply with such requirements could result in sanctions affecting the JOA.

The resignation of the operator may be requested by either party in the following cases:

- the operator becomes a failing party;
- the operator assigns all of its participating interest to a third party, or has, with its affiliates, a participating interest of less than 20 per cent;
- the operator has not discharged an obligation under this agreement and has not remedied it within 30 days of the default notice by the non-operators; or
- the operator or its parent companies are bankrupt or in judicial settlement.

Joint ventures

21 | What is the legal regime for joint ventures?

All the understandings or agreements whereby the holder of a hydrocarbon exploitation licence or a contract agrees to entrust, assign or transfer all or part of the rights and obligations arising from the licence or contract, are subject to prior approval.

The hydrocarbon exploitation licences, or contracts may be assigned or transferred, subject to prior authorisation, to entities that possess the technical and financial capabilities to carry out the petroleum operations.

The requests for assignment and transfer, unless such transactions are made between affiliated companies, must be addressed to the minister in charge of hydrocarbons for approval.

Reservoir unitisation

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

When the limits of a commercial deposit straddle several exploration permits, the holders concerned, after allotment to each of an exclusive authorisation of exploitation on the part of the deposit located in the contractual zone that was the subject of their exploration licence, sign a unitisation agreement for development and joint operation.

If a hydrocarbon deposit extends over several separate areas of exploitation, the holders of the exclusive operating licences concerned shall endeavour to exploit it jointly under the best conditions of technical and economic efficiency and for the sake of optimal exploitation.

Any joint operating agreement entered into between the holders and the related programmes shall be communicated to the Minister of Hydrocarbons within 15 days of the date of signature.

Licence holders have a year to develop a joint operation programme. In the absence of an amicable agreement at the end of this period, the Minister of Hydrocarbons shall draw up a programme prepared in accordance with international standards and practices of the petroleum industry that safeguards the interests of each holder.

In the event of a disagreement, the dispute is subject, at the expense of the holders, to expert or dispute resolution channels provided for in accordance with the provisions of the applicable petroleum contracts.

Licensee liability

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

The rights, duties, obligations and liabilities of the parties between them are individual and not joint and several. However, with regard to third parties, the liability can be joint and several.

Guarantees and security deposits

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

The parental guarantees are authorised by law. Senegal undertakes for the duration of the PSC to grant to the contractor and to its subcontractors, the benefit of certain guarantees for the operations carried out as the right to contract loans abroad necessary for the execution of their activities within Senegal.

The production-sharing contract, attached to the exploration licence, sets out the respective rights and obligations of the various parties, during the duration of the exploration phases and, if applicable, those of exploitation related thereto.

The PSC defines, in particular, the work obligations for each exploration period with the corresponding guarantees. In that respect, a security deposit is common in practice.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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

Petroleum contract holders and companies working on their behalf must:

- provide opportunities for local private investors with technical and financial capacities to participate in oil risks and operations;
- give preference to local companies for all construction, supply or service contracts, subject to equivalent conditions in terms of quality, quantity, price, delivery time and payment;
- employ, on an equal basis, as a matter of priority, local staff for carrying out oil operations in Senegal;
- contribute as much as possible to technology transfer to local companies with accompanying relationships; and
- pay to a first-ranking financial institution the amount of the security for the rehabilitation and restoration of the sites under the conditions set out in the oil contract.

Petroleum contract holders contribute to the professional training of Senegalese managers and technicians through an annual training programme defined in the applicable oil contract.

Non-compliance of requirements related to the local content is subject to the following penalties:

- the termination of the contract;
- a fine of US$1 million to US$20 million, without prejudice to penalties provided by other laws in force. In the event of repetition of the offence, the fine shall be doubled;
- for the contractors, no recovery of costs related to operations; and
- for the subcontractors, providers and service providers, the exclusion of the competitive tendering platform and the prohibition to enter into contracts related to oil and gas activities.

All foreign contractors, subcontractors, service deliverers and suppliers, involved directly or indirectly in oil and gas activities, must submit and implement a local content plan. This plan describes activities of the company and the necessary goods, services and skills for oil and gas operations.

Social programmes

26 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

Contractor payment obligations are in the form of social funds. Such social funds include training and publicity fees for the national oil company and a social programme benefiting local communities. PSC holders are subject to social spending commitments favouring local people.

The social funds are annually payable to Petrosen.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 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 mining titles of hydrocarbons are transmitted to the Minister of Hydrocarbons for approval. Prior approval is mandatory.

Any change of control shall be notified to the Minister of Hydrocarbons within 10 days of its effective date.

If, within 60 days following the notification to the Minister of the transfer project accompanied by the transfer document, the Minister has not made known his or her reasoned opposition, this transfer shall be considered as having been approved upon the expiration of that time period. This is an administrative law principle.

Usually, pre-emptive rights are reserved for the parties to the JOA.

Approval to change operator

28 | Is government consent required for a change of operator?

Yes. Any change of operator shall receive the prior approval of the Minister that may not be refused without duly-founded reasons when the new operator has the technical and financial capacities necessary for carrying out the oil operations.

Transfer fees

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

Taxation or fees regarding transfer of rights related to hydrocarbon mining rights, in the exploitation period, is governed by the provisions of the General Tax Code.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

While the contract is in effect, probes acknowledged by joint agreement as unsuitable for the pursuit of research or exploitation shall be taken up by the state, upon the request of the Ministry of Hydrocarbons for the purposes of converting them into water wells. The contractor shall be responsible for leaving in place the pipes over the requested height and possibly the wellhead and to seal the probe in the requested area.

Upon expiration or cancellation of the contract, or in the case of surface area returns, the assets belonging to the contractor that are necessary for the oil operations in the area, shall become the property of the state at no charge, unless they must be used by the contractor for the exploitation of other marketable deposits located in Senegal. The purpose of the transfer of ownership shall be for involving, if necessary, the cancelling out of any surety or guarantee involving these assets, or that these assets comprise.

If the Minister of Hydrocarbons decides not to use all, or part of said assets, it may demand the contractor remove them at the contractor's expense.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 | 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 relevant laws are the Petroleum Code and the Environment Code.

In the event of a partial or total waiver, the holder of a production sharing contract shall carry out the abandonment work, taking all necessary measures to safeguard the environment in accordance with the environmental and social impact study.

The decision to close and abandon a well that has been drilled as part of the joint operations will be subject to the approval of the operations committee. The parties shall carry out the abandonment work of the joint operations they have financed.

Petrosen will not be required to contribute to the funding of abandonment work related to exploration and evaluation operations.

Security deposits for decommissioning

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

Within six months of the submission of the abandonment plan, the parties will conclude an amendment to the JOA defining the guarantees to be provided by each of the parties establishing and financing the abandonment plan. Such guarantees may comprise creating an escrow account or a letter of credit issued by a bank or a guarantee of an affiliated company, providing reasonable assurance of meeting the obligations of each party related to this abandonment plan and acceptable to the Minister of Hydrocarbons.

TRANSPORTATION

Regulation

33 | 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?

During the valid period of an exclusive exploitation licence, the contractor has the exclusive right to transport the production resulting from its exploitation activities.

The authorisation to transport hydrocarbons is issued by order of the Minister of Hydrocarbons and is issued exclusively to any legal entity under Senegalese law justifying technical and financial capacities necessary for the conduct of hydrocarbon transport activities.

This transport is made to the points of storage, treatment, loading or consumption, under the conditions defined in the code and documents taken for its application and in accordance with the stipulations of the petroleum contract.

The authorisation order for the transport of hydrocarbons entitles the holder to the construction and operation of hydrocarbon transportation infrastructures.

The Minister of Hydrocarbons' order fixes the duration of the authorisation of transport of hydrocarbons.

However, for transport installations in maritime zones, the authorisation to transport hydrocarbons is issued by joint order of the Minister of Hydrocarbons and the Minister for Maritime Affairs.

The authorities regulating pipeline, marine vessel and tanker truck transportation include:

- the Minister of Hydrocarbons;
- the Minister of finance;
- the Port of Dakar; and
- the National Agency of Marine Affairs.

COST RECOVERY

Determining recoverable costs

34 | Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Oil producer costs shall be recoverable in the following manner:

- oil producer costs incurred during the implementation of the oil operations with respect to the contract area shall be recovered during the year in which the oil producer costs were incurred or the year during which the first commercial year of the contract area is placed in production, if the latter year is after the year in which costs were incurred;

- oil producer costs relating to fixed assets shall be recoverable at the annual amortisation rate. The recovery of the costs of the fixed assets corresponding to an exploitation perimeter shall begin the year during which the fixed assets were implemented or the year during which the production on the exploitation perimeter begins if the latter year is after the year in which the fixed assets were implemented; and
- if the oil producer costs recoverable during any year exceed in value the limit fixed in oil the contract, the surplus shall be brought forward to the year or years following until the recovery of the oil producer costs.

The recovery of the oil producer costs and the production sharing shall be established each quarter of the year on a cumulative basis. If the production or the oil producer costs recoverable are not definitively known as of the calculation date, estimates made based on the annual project schedule and the budget of the year shall be used. No later than two months after the end of each year, the amounts of the recovery of the oil producer costs and the production sharing for the year shall be determined as well as the necessary adjustments.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

In accordance with the Environment Code, plants, factories, stores, warehouses depots, worksites and industrial, artisanal or commercial installations are subject to the Classified Installation for Protection of the Environment (ICPE) regime upon declaration and authorisation. An offshore exploration project is subject to the ICPE Class 1 or A 1100 of this type of installation.

Class 1 installations are defined as presenting the risk of 'serious hazards or disturbance' with regard to 'health, safety, public hygiene, agriculture, nature and the environment in general'. They are subject to the authorisation regime. A study evaluating impacts on the environment is used to integrate environmental considerations into the economic and financial analysis of the project; this category requires an in-depth environmental evaluation.

The Ministry of Environment make sure that the petroleum operations are conducted so as to ensure the preservation of natural resources and to protect the environment. Administrative as well as criminal sanctions can be issued by the Ministry of Environment in accordance with the Environmental Law.

Petroleum operators are required to keep a register of all environmental compliance activities. Following compliance, the Ministry of Environment will issue two certificates;:the Certificate of Environmental Compliance and the Certificate of Classified Facilities for Class 1.

Without prejudice to the sanctions provided for by other laws or regulations, anyone who contravenes the provisions of the petroleum legislation and the legislation regarding hygiene, health and safety is liable to a fine ranging from US$1 million to US$20 million equivalent in West African francs at the exchange rate of the day of the fine.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The contract associated with the exploration permit sets forth the respective rights and obligations as well as the obligations pertaining to the training and hiring of local labour.

Foreign personnel employed by the contractor and its subcontractors for the needs of the oil operations shall be authorised to enter and stay in Senegal for the required duration. The Ministry of Energy shall assist the contractor for the issuance and the renewal of the administrative documents necessary for the entry and stay in Senegal of the personnel and their families, in accordance with the current legislation.

The contractor must from the start of the oil operations ensure that Senegalese citizens with equal qualifications are given priority, and that Senegalese citizens receive training in order to enable their promotion to any position as qualified workers, officials, clerks and managers.

Penalties include a fine of 500,000 to 1 million West African francs and imprisonment from three months to one year, or both to any employer, agent or employee who knowingly affixes to the worker's card, the register or any other document, untrue certificates relating to the duration and conditions of work performed by the worker, as well as any worker who knowingly makes use of these certificates.

TAXATION

Tax regimes

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

In an administrative procedure, the Minister of Hydrocarbons sends the production sharing contract to the Minister of Finance, for an opinion on the financial, tax and customs provisions.

Capital gains are treated as operating profits and included in the corporate income tax base.

The standard corporate tax rate in Senegal is 30 per cent. For non-residents, the withholding tax (WHT) is a final tax. Dividends paid to a non-resident company are subject to 10 per cent WHT, unless the rate is reduced under a tax treaty. Interest paid to a company, or individual, is subject to 16 per cent WHT, unless the rate is reduced under a tax treaty. The rate is 8 per cent for interest on a bank or stockbroker account, and 20 per cent on interest on cash vouchers.

The corporation tax rate is 25 per cent, as provided in the General Taxation Code. The payment of an annual surface rent is payable at contract signing.

The contractors are subject to an additional petroleum tax that is calculated according to a criterion of profitability of the petroleum operations.

Property taxes and additional taxes are payable under the common law conditions on residential building.

Pursuant to the provisions of the Tax Code, in particular article 402 and the following, there shall be a tax on financial activities. The tax applies to all fees levied on financial transactions conducted in Senegal, including commissions and interest income on loans, advances, commitments and money transfers made from Senegal, excluding postal orders.

Any application for the issuance of renewal or extension of hydrocarbon mining titles is subject to the payment of a file processing fee,

set at US$50,000, which is non-refundable and non-recoverable, for petroleum costs paid in one instalment.

The methods for recovering surface rent are determined in the petroleum contract concluded with the holder and the amounts applied are as follows:

- initial exploration period – US$30 per km2 per year;
- first exploration period – US$50 per km2 per year; and
- second exploration period – US$75 per km2 per year.

Petroleum contract holders are subject, during the exploration period and the production period, to social and non-recoverable social spending commitments.

The amounts of these social funds are set in the contract concluded with the operator. The government authority responsible for enforcing the tax regime is the Directorate General of the Taxes and Domains (under the authority of the Ministry of the Economy, Finance and Planning).

COMMODITY PRICE CONTROLS

Crude oil mining

38 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. Crude oil prices are reviewed each year by the National Committee of Hydrocarbons in charge of the monitoring prices.

COMPETITION

Competition enforcers

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

The National Hydrocarbons Committee is responsible for proposing sanctions against licensees in case of failure to fulfil their obligations. The power to sanction belongs to the Minister of Energy.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

The process is conducted and supervised by the National Hydrocarbons Committee. However, the regulations implementing the new Petroleum Law would have to indicate in detail the process to follow.

It is not easy to determine the exact duration, which is dependent on administrative formalities.

In the event of price and competition infringement, and economic disputes, the following penalties may be imposed after formal notice:

- a fine of 1 million to 100 million West African francs;
- a fine twice the value of the offence's gain;
- suspension between one to six months; or
- licence withdrawal.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

The licensee holds title to the seismic data collected. However, oil operations are subject to the oversight and control of the Minister of Hydrocarbons. Consequently, holders of mining titles or service contracts are required to make available to duly authorised agents and persons authorised by the Minister all information, data and documents necessary for the proper performance of their duties.

The agents under the authority of the Minister in charge of the oil operations sector, duly accredited to the surveillance and the control are held to respect the professional secrecy. The regulator cannot require the data owner to report or release the data to it.

INTERNATIONAL

Treaties

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

Senegal is party to the United Nations Convention on the Law of the Sea. Further, Senegal is actively involved in several international investment-related organisations and is a member of the International Centre for Settlement of Investment Disputes and the Multilateral Investment Guarantee Agency. It is a member of various international legal instruments including the International Convention on the Intervention on the High Seas, and, in the event of an accident causing or result in oil pollution, the International Convention for the Prevention of Pollution from Ships. More importantly, Senegal is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

Foreign ownership

43 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?

No. The state may authorise one or several legal entities of its choice, either Senegalese or foreign investors, to undertake oil operations within the country. The state has free participatory interest at 10 per cent of share capital.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

No. Any company planning to import oil or derived products to supply the local market or for re-export must first obtain a licence from the Minister of Hydrocarbons. The import of oil or derived products into Senegalese territory can only be carried out by sea.

The purpose of the regulation governing the import, refining, exporting, storage, transportation, distribution and marketing of hydrocarbons, is to ensure the continuous supply of petroleum products to the national market.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

On 27 January 2020 the Parliament of Senegal adopted Law No. 2020/06, which establishes its first Gas Code. Indeed, neither the 1998 Petroleum Code nor the 2019 Petroleum Code have taken into account the specificities of the gas sector with respect to exploitation, production, storage, transport and distribution. Further, following huge gas discoveries, the government of Senegal has designed its 'Gas to Power Strategy', which determines and defines the operating rules as well as the processes by which Senegal should transform its gas reserves into power generation.

The new gas Code has set up a legal and institutional framework conducive to the gas development and to the optimisation of the full gas value chain.

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GENERAL

Key commercial aspects

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

The Thai petroleum concession has proven to provide a very stable foundation for investment in the oil and gas industry and downstream projects since 1971. However, Thailand has limited geological prospects for oil and gas. The country currently imports more than 30 per cent of its natural gas requirements and approximately 88 per cent of its crude oil requirements and its petroleum reserves are declining with increasing demand.

The 2017 amendments to the Petroleum Act (PA) and Petroleum Income Tax Act (PITA) added production sharing contract (PSC) and service contract (SC) regimes. The PSC regime is to be implemented with contracts for the continuation of production from the Erawan and Bongkot fields when the concessions for these fields expire in 2022 and 2023.

Based on the procurement and distribution of fuel and the statistics provided on the Department of Energy Business (DOEB)'s website, in 2019, Thailand imported a total of 49,611 million litres of crude oil. Regarding the importation of condensate, Thailand imported a total of 1,074 million litres for the year 2019. Thailand also imported natural gas of totalling 325,436 million cubic feet in 2019. 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.

Natural gas plays a large role in satisfying Thailand's energy requirements. Based on the procurement and distribution of fuel and the statistics provided on the DOEB's website, the production of natural gas for 2019 increased by 3.3 per cent from 2018. In 2019, Thailand produced 1,137,289 million cubic feet; whereas, the total importation rate of natural gas was 325,436 million cubic feet. Conversely, there was a 3.0 per cent decrease in the domestic crude oil production compared with 2018.

Major producers of crude oil are PTT Exploration & Production Public Company Limited (PTTEP), Chevron, CEC International, Ophir and Mubadala.

Oil refineries are presently operated in Thailand by ExxonMobil (Esso), IRPC, ThaiOil, Bangchak, SPRC and PTTGC.

Further, petroleum products are marketed by PTTOR, ExxonMobil (Esso), Bangchak, Shell, Chevron (Caltex), ThaiOil, IRPC, etc.

Energy mix

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

According to the Department of Alternative Energy Development and Efficiency (DEDE), the breakdown of Thailand's final energy consumption in the first 11 months of 2019 is as follows:

- petroleum products, 48.4 per cent;
- electricity, 20.1 per cent;
- renewable energy (eg, wind, solar, bagasse, agricultural waste, municipal solid waste and biogas), 10.1 per cent;
- coal and lignite, 8.3 per cent;
- traditional renewable energy (eg, wood fuel, charcoal), 6.7 per cent; and
- natural gas, 6.4 per cent.

The country's total crude oil procurement for the year 2019 is 357,967Kbd, and is estimated to be 155.92 million litres per day. 12.8 per cent of the total crude oil procurement came from domestic supply, while the majority, 87.2 per cent, was imported.

Government policy

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 (MOE) is responsible for administering the laws governing petroleum. Energy policy is managed by the Energy Policy and Planning Office (EPPO), the Office of the Permanent Secretary and the MOE.

EPPO 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 and energy.

Registering a licence

4 Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

The website of the Department of Mineral 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.

The annual report of the DMF is a public source of information on investments by concessionaires and on government income (income

tax, royalties and special remuneratory benefit (SRB)). It includes a list of all outstanding concessions and details of ongoing investments, etc.

Legal system

5 | Describe the general legal system in your country.

Thailand is a civil law jurisdiction. The Constitution is the supreme law in the Thai legal system. Secondary sources of law under the Constitution are statutes, emergency royal decrees and royal decrees. Ministerial regulations, notifications, and ordinances are commonly adopted pursuant to enabling statutes. Decisions and rulings of the judiciary and civil service are not binding but have considerable influence as precedents.

There is an independent judiciary that provides a forum for the settlement of disputes.

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 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. Government agencies may be sued in the courts and cannot raise a defence of sovereign immunity. However, state property is not subject to execution.

REGULATION OVERVIEW

Legal framework for oil regulation

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

Key legislation governing the legal framework regulating oil and gas activities includes the Petroleum Act, BE 2514 (1971), as amended (PA), and the Petroleum Income Tax Act, BE 2514 (1971), as amended (PITA). The PA is administered by the DMF, while the PITA is under supervision of the Revenue Department. The domestic trading of oil and gas are also governed by the Fuel Oils Trading Act, BE 2543 (2000) and Fuel Oils Control Act, BE 2542 (1999). These two laws are administered by the DOEB. Both the DMF and DOEB are part of the MOE and play a role in implementing the policy.

The natural gas sector is also regulated by the Energy Industry Act, BE 2550 (2007) (EIA), supervised by the Energy Regulatory Commission (ERC).

Expropriation of licensee interest

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

No.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

Yes. Under sections 51 and 52 of the PA, the Minister of the MOE has the power to revoke a concession, PSC or SC for good cause, subject to providing time to rectify a default. Grounds for termination would also be found under clause 14 (Revocation of Concession) of the model form of petroleum concession and clause 16 (Termination of PSC) of the model form of PSC.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The government regulatory and oversight bodies that are principally responsible for regulating oil exploration and production activities include the DMF, the EPPO and the MOE.

The breach of the relevant laws and regulations may attract penalties on the entity, and, in some cases, any directors who collaborate to commit the offence or do not reasonably manage to prevent such offence will be penalised by fines and imprisonment.

Government statistics

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

The Petroleum Institute of Thailand (PTIT), a non-profit foundation established in 1985, is the best source of statistics on the petroleum and petrochemical business. It collects information from relevant government departments, including the DMF, DEDE, PTT, DOEB, Customs Department and EPPO.

NATURAL RESOURCES

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

Title to petroleum resources belongs to the government. Owners of surface land have no rights to the mineral resources underneath their land. No person may explore for or produce petroleum in any area, whether such an area is owned by such a person or other persons, except by virtue of a concession, production sharing contract (PSC) or service contract (SC). For concessions, title to the petroleum passes to the concessionaire at the wellhead. However, for a PSC, title remains with the state at all times, and the contractor is compensated with oil. Under an SC, the contractor is paid for its services (presumably in cash), and never owns the petroleum.

Exploration and production – general

12 | 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 activity is conducted in Thailand both onshore and offshore. Certain areas are off limits to exploration and production, including military areas, agricultural land reform areas and certain areas reserved for environmental conservation purposes.

Exploration and production – rights

13 | How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

The Department of Mineral Fuels (DMF) regulates petroleum exploration and production, under the supervision of the Petroleum Committee established under the Petroleum Act (PA).

Historically, the DMF awarded petroleum concessions through international bidding. Bids were 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 under its control and has the authority to grant licences to explore and produce, under the Notification of National Executive Council No. 331 issued in December 1972.

Although not expressly required by law, the Thai practice has been 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.

The PA provides that the concession, production sharing contract (PSC) and service contract (SC)shall be in accordance with the form prescribed by a ministerial regulation issued under the PA. In the past, rights to explore for and produce petroleum were granted under petroleum concessions, in a form prescribed in Ministerial Regulation Prescribing Form of Petroleum Concession, BE 2555 (2012). The form for a PSC is prescribed by Ministerial Regulation Prescribing the Form for Production Sharing Contract, BE 2561 (2018). There is currently no form or model SC.

The Notification of Petroleum Committee on the Rules and Procedures for the Determination of the Area for Petroleum Exploration and Production by Concession, Production Sharing Contract or Service Contract BE 2560 (2017) shall be used for the determination of the regime applicable for the exploration and production of petroleum. In essence, an SC shall be used if the data indicates that there is at least 300 million barrels, or the cumulative production and the existing crude oil reserves of the whole area is at least 4 million barrels per petroleum well.

For an area where the possibility of discovering petroleum for commercial purposes in the regional petroleum geology where the area is located is higher than the possibility of discovering petroleum for commercial purposes in the kingdom, the method for discovery and production is the PSC. Conversely, if the possibility of discovering petroleum for commercial purposes in the regional petroleum geology where the area is located is lower or equal to the possibility of petroleum discovery for commercial purposes in the Kingdom, the method for discovery and production through a petroleum concession.

Petroleum bidding for offshore blocks G1/61 and G2/61

The Ministry of Energy (MOE) issued an announcement dated 24 April 2018 inviting applications to produce petroleum in offshore block G1/61 (Erawan field) and G2/61 (Bongkot field). This bidding round specified that the PSC was to apply.

There was no condition requiring the applicant to register as a limited company under Thai law. Applicants were required to have adequate equipment, personnel and financial resources to perform exploration, production and disposition of petroleum. Applicants that did not satisfy these requirements were required to submit a guarantee from an affiliated entity (acceptable to the MOE) that did possess those resources.

Additionally, applicants were also required to provide evidence of having a strong financial status by having shareholder's equity of at least US$4 billion and US$2 billion in 2016-2017 for block G1/61 and block G2/61, respectively, as well as evidence of being an offshore gas field operator of at least one asset having production and distribution at a rate of at least 100 million cubic feet per day in 2016-2017. The winners of this bidding process were a consortium of PTTEP Energy Development Company Limited and MP G2 (Thailand) Limited for block G1/61 (Erawan field) and PTTEP Energy Development Company Limited for G2/61 (Bongkot field).

Twenty-third bid round

The 23rd round of bidding for petroleum exploration and production in three exploration blocks in the Gulf of Thailand was scheduled to open during April 2020. However, the MOE announced that the 23rd bid round will be delayed due to the impact of the covid-19 outbreak, and the global decline in oil prices.

Government participation

14 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 for the 23rd bid round have not been announced yet.

Petroleum bidding for offshore blocks G1/61 and G2/61

The bidding for offshore blocks G1/61 and G2/61 allowed for state participation. In this regard, the MOE allowed a government agency to participate as an investor in the PSC for the exploration and production of petroleum for offshore blocks G1/61 and G2/61 up to 25 per cent.

Royalties and tax stabilisation

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

Royalties

Rates of royalties under Thailand III concession terms were as follows, imposed at progressive rates:

- up to 60,000bbl/d – 5 per cent;
- 60,000-150,000bbl/d – 6.25 per cent;
- 150,000-300,000bbl/d – 10 per cent;
- 300,000-300,000bbl/d – 12.5 per cent; and
- more than 600,000bbl/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 under the new PSC are 10 per cent.

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 action, not by international arbitration.

Income tax

Petroleum concessionaires are also subject to income tax under the Petroleum Income Tax Act, as follows:

- 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 biannually;
- 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 special remuneratory benefit (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; and
- contractors under PSCs are subject to income tax at 20 per cent.

Special remuneratory benefit

In addition to royalties, petroleum concessionaires under Thailand III terms are subject to SRB, a form of excess 'windfall profits' tax adopted in 1989.

The SRB is 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
4,801–14,400 baht	1 per cent per 240 baht increment
14,401–33,600 baht	1 per cent per 960 baht increment
More than 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.

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. Clause 12 of the prescribed form of PSC includes similar stabilisation language.

Licence duration

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

The duration of a concession 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.

The model form of PSC does not specify the duration of the exploration period, but provides for one extension not exceeding three years (clause 2(1)). It does not specify the duration of the petroleum production period, but provides for one extension not exceeding 10 years (clause 2(6)). We expect the initial durations will be stated in the announcement of the next bid round.

Extent of offshore regulation

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

Thailand published the limits of its continental shelf for the purposes of mineral exploration.

In 1979, Thailand and Malaysia agreed on a joint-development area to resolve a dispute about marine boundaries. In 1997, Thailand and Vietnam agreed 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 claims area' (OCA). Currently, negotiations are contemplated to resolve the OCA issue, though the degree of progress being made with these negotiations is not clear. Thailand and Myanmar agreed on their lateral boundary on 25 July 1980.

Onshore offshore regimes

18 | 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.

Authorised E&P entities

19 | 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 equipment, personnel and financial resources capable of performing exploration and development work obligations.

The PA sets forth the basic qualifications of bidders for petroleum concessions, which may be further specified in the invitation to bid.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

The PA is silent on joint operating agreements (JOAs) and on the roles of the operator under a JOA. In the past, the DMF has shown no interest in JOAs. The model PSC includes clause 20 (Joint Operating Agreement), which prescribes certain rules applicable to JOAs. The DMF is not a party to a JOA, but must be kept informed about amendments to the JOA and related matters.

Joint ventures

21 | 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 PA. The PA does not prescribe any rules concerning joint ventures other than that parties to a joint venture are jointly and severally liable for their mutual obligations.

At present, there is no requirement that the joint venture agreement or JOA between the joint venture partners be approved, filed or registered.

Reservoir unitisation

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

Section 72 of the PA provides that the government may order unitisation. However, there are no regulations governing how this power is to be exercised.

Thailand and Malaysia cooperate on a joint development area in the Gulf of Thailand under the auspices of a joint authority. The overlapping claims area between Thailand and Cambodia has stalled exploration and production, as this dispute has not yet been resolved.

Licensee liability

23 | 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 or contractor under a PSC. If there are multiple concessionaires or multiple contractors under a PSC, the petroleum companies will be jointly and severally liable for the obligations under the governing instrument.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

Parent company guarantees are required under section 24 of the PA in cases where 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 the criteria for an acceptable guarantor, but section 24 of the PA grants the MOE wide discretion in this regard. In practice, the MOE almost always requires a parent company guarantee.

In the G1/61 and G2/61 bidding round, bidders were required to provide a bid bond of 3 million baht per block. In addition, once a PSC contractor was selected, a performance guarantee was required in the amount of 5 million baht.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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

In a number of sectors, there are requirements to use local goods and services. There are a number of laws that require majority Thai ownership. Under the Foreign Business Operations Act, many businesses (including petroleum service business) are subject to restrictions, and require foreign service companies to obtain 'foreign business licences'. However, exploration and production are not subject to any general foreign ownership limitations.

Social programmes

26 | Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

Most petroleum concessions include 'special advantages', such as scholarships, training, contributions to support petroleum development and community development, etc.

The Ministerial Regulation Prescribing Production Sharing Contract, BE 2561 (2018) provides that 'special advantages' shall be in accordance with invitation for proposal or as per the PSC's contractor offer.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 | 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 Petroleum Act (PA) permits farm-in arrangements (under section 47), transfers of concessions to affiliates (under section 48) and transfers to third parties (under section 50). Under section 48, a concessionaire may transfer its interest in a concession to certain affiliates by notifying the Ministry of Energy (MOE). The MOE may require a substitute parent company guarantee, depending on the circumstances. The transfer will take effect from the date on which the MOE confirms that the transfer was made in compliance with section 48.

Under section 50 of the PA, 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 PA to be eligible to receive a concession block from the transferor. There is no prescribed timeline, but in practice it may take between three to six months (or longer) to obtain this approval.

The PA 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.

Approval to change operator

28 | Is government consent required for a change of operator?

In principle, no. However, if a change of operator is proposed in connection with a requested change in the concessionaire under section 50 of the PA, then the Minister of the MOE is likely to take into account the qualifications of the potential transferee in considering the transfer application.

Transfer fees

29 | 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.

Changes of control by way of a transfer of shares in a parent company outside Thailand do not trigger income tax liabilities in Thailand.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 | Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

The concessionaire is the owner of facilities and equipment used in exploration and production activities during the term of the concession. However, in the PSC and service contract regimes, the title to facilities and equipment belongs to the state.

At the end of the concession term, if the state deems that the facilities or installation can be useful for further usage, the relevant authority may serve a written notice on the concessionaire identifying which installations are to be delivered to the state. The concessionaire shall deliver them without charge within one year of date of execution of the agreement between the state agency and the concessionaire.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 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 Act (PA) provides the Director General of the Department of Mineral Fuels with the authority to prescribe regulations concerning decommissioning activities. Section 80/1 of the PA outlines the general rule that the concessionaire will be responsible for decommissioning works, while Section 80/2 is concerned with the requirement of the concessionaire to make a security deposit to ensure that it will be financially responsible for those decommissioning works. The specific procedures, rules and timelines outlined under section 80/1 and 80/2 of the PA are to be in accordance with ministerial regulations on decommissioning.

The Ministerial Regulation on Decommissioning (2016) requires the concessionaire to submit a decommissioning plan (divided into an initial decommissioning plan and a final decommissioning plan), an estimate of decommissioning costs, a decommissioning environmental assessment report and a best practical environmental option report to the Director General within prescribed timelines.

The obligation of the concessionaire to begin the decommissioning process will be triggered by any of the following:

- the concessionaire not using the installations continuously for more than one year;
- petroleum reserves of the concession are less than 40 per cent of the sum of the accumulated petroleum production and the petroleum reserves;
- the remaining time for petroleum production as specified in the concession is five years; or
- the concessionaire wants to commence decommissioning activities.

The estimated decommissioning costs and decommissioning plan must be audited by an authorised third party based on qualifications prescribed by the Director General of the DMF and published in the Government Gazette. The Director General of the DMF has the authority to accept the decommissioning reports or request clarifications or amendments if the reports are not in compliance with the prescribed rules.

The concessionaire will be obligated to make a security deposit to the Director General of the DMF, which may be in the form of:

- cash or a cashier check payable by a bank;
- Thai government bonds;
- a letter of guarantee issued by a bank;
- an irrevocable standby letter of credit; or
- any other security prescribed by the Director General and announced in the Government Gazette.

The security deposit will be for an amount approved by the Director General of the DMF that must not be less than the estimated decommissioning cost. Failure to make an adequate security deposit will result in a written warning from the Director General of the DMF, and exposure to a surcharge of 2 per cent per month of the unpaid amount.

The decommissioning regulation leaves a few rules and procedures open, to be determined later by the Director General of the DMF. There have been four notifications of the DMF relating to decommissioning issued in 2018 and 2019 providing: (i) a checklist of information needed for the decommissioning and estimation of decommissioning cost report; (ii) details as to the report and plan for the environmental management upon decommissioning; (iii) details on the consideration of security, placement of security and renewal of security for decommissioning; and (iv) the form for the placement of security for decommissioning.

Security deposits for decommissioning

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

Under the Ministerial Regulation on Decommissioning, BE 2559 (2016), the concessionaire is obligated to make a security deposit.

TRANSPORTATION

Regulation

33 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 are a few private pipelines for the transportation of oil products. However, the transportation of crude oil and petroleum products is regulated by the Department of Energy Business under the Fuel Oil Control Act, BE 2542 (1999) and the Fuel Oil Trading Act, BE 2543 (2000).

Other government bodies are 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 (MOT);
- railway – State Railways of Thailand; and
- tanker trucks – Department of Land Transport and the MOT.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Under the new production sharing contract (PSC) regime, all actual expenses in petroleum operations are to be borne by the contractor and deducted from production, as detailed in the contract, and in accordance with work plans and budgets approved by the Director General of the Department of Mineral Fuels (such approval is required annually under section 53/4 during the term of the contract). Deductions may not exceed 50 per cent of the value of total production. If actual expenses exceed 50 per cent in any year, the excess can be deducted in the following year, as long as such expenses for that year do not exceed 50 per cent. Up to 50 per cent of the remainder of the total production, after deduction and payment of royalty, shall be shared between the state and the contractor, and the contractor's share shall not exceed 50 per cent. The contractor is to pay a royalty of 10 per cent on the total production.

Under the Petroleum Income Tax Act (PITA), as amended, a company that is a party to a PSC must pay income tax of 20 per cent of the net profits from the petroleum business. PITA does not mention service contracts. Therefore, a party to such a contract is subject to the general income tax under the Revenue Code of 20 per cent.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

The Occupational Safety, Health and Environment Act, BE 2554 (2011) generally governs the duty of an employer to arrange and maintain safe and hygienic working conditions and environment for its employees, as well as to support and promote the work operation of employees in order to prevent harm to life, and the physical and mental health of its employees. This regulation also applies to employees working in upstream oil-related operations onshore and offshore.

Ministerial regulations issued under such Act provide standards for the workplace in regard to light, heat and sound to provide a safe and healthy workplace environment. Ministerial regulations issued under the Act also provide guidelines on fire prevention and safety measures in relation to work related to electricity and dangerous chemicals, construction, etc.

Concessionaires and contractors are subject to the following labour and environmental legislation of general application:

- the Labour Protection Act, BE 2541 (1998);
- Ministerial Regulation No. 7 BE 2541 (1998) issued under 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, as amended, 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 National Environmental Quality 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 under the administration of the Department of Energy Business requires major oil traders who trade 100,000Mmt of oil (or 50,000Mmt of LNG) 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.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The Working of Aliens Act, BE 2521 (1978) and the Foreign Working Management Emergency Decree, BE 2560 (2017) mandate 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 PA provides a procedure that facilitates the issuance of work permits, which is administered by the Department of Mineral Fuels and the Petroleum Committee.

A number of laws provide for labour protection, labour courts, unions, provident funds, social security, etc. The key law is the Labour Protection Act, which prescribes general rules relating to employment. Ministerial Regulation No. 7, BE 2541 (1998) issued under the Labour Protection Act specifically provides labour protection to employees working in the petroleum industry, namely work time, holiday, overtime payment, holiday payment, as well as working condition for women in relation to drilling, refining and manufacturing of chemicals.

The Skill Development Promotion Act, BE 2545 (2002) requires business operators employing 100 or more employees to provide skills training each year.

Concessionaires and PSC contractors are required to employ Thai nationals to the maximum extent possible and to train Thai nationals in order to improve their skills. So that they are qualified to take up positions at all levels in petroleum operations within a reasonable period of time.

TAXATION

Tax regimes

37 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 at 50 per cent under the Petroleum Income Tax Act, which is administered by the Revenue Department of the Ministry of Finance. Concessionaires may also be subject to the special remuneratory benefit.

Contractors under PSCs are subject to income tax at 20 per cent.

Petroleum service companies and operators of transportation, marketing and distribution activities are subject to income tax at 20 per cent 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

Crude oil mining

38 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 or PSC contractor 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

Competition enforcers

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

The Trade Competition Act, BE 2560 (2017) was enacted in 2017 and came into force on 7 October 2017. The Trade Competition Commission remains the government body with general regulatory oversight for anticompetitive or unfair practices, other than in sectors with specific trade competition regulations. Crude oil and crude oil products are not under supervision of any specific trade competition regulations; they are governed by Trade Competition Act.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

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.

The Trade Competition Commission is the regulator with supervisory authority for the Trade Competition Act.

Sections 54 and 55 of the new Trade Competition Act proscribe specific conduct that is anticompetitive or an abuse of a dominant operator's market power. These include:

- jointly, with a competitor, operating in the same market, fixing the purchase or sales prices, or other conditions of the price of goods or services, either directly or indirectly;
- jointly, with a competitor, operating in the same market, limiting the quantity of goods or services that each operator will produce, purchase or sell;
- jointly, with a competitor, operating in the same market, to allocate geographical areas will each operator will sell, or to generally reduce the purchase of goods and services;
- jointly, with a competitor, operating in the same market, to knowingly establish an agreement on conditions in order for one side to win an auction or to win in a bid of goods or services in order to allow another operator not to bid in the same auction for goods or services;
- to reduce the quality of goods or services to a condition lower than previously produced or sold;
- to appoint or assign any one person to exclusively sell the same goods or provide the same services, or of the same type;
- to set conditions or practices for purchasing or producing goods or services so that the practice follows the agreed terms;
- other types of joint agreements in other manners as prescribed by the Trade Competition Commission.

The Trade Competition Act divides regulated mergers into two categories: those which require approval (a pre-merger filing) from the Trade and Competition Commission (TCC) and those which only require notification to the TCC (a post-merger notification). Essentially, submission of a pre-merger filing will be required if the merger may result in the creation of either a monopoly, or a business operator with a dominant market position. Otherwise, the merging entity (or merging entities) must notify the Trade Competition Commission within seven days after the completion of the merger if the merger may substantially lessen competition of the market.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

The Petroleum Act (PA) is silent on title to seismic and other data. However, according to section 76 of the PA, a concessionaire and party to a production sharing contract shall report the results of the petroleum business operation and annual working plan and budget to the Department of Mineral Fuels (DMF). The report shall include details and data since the exploration of petroleum began. One year after the DMF received such information, it may be made available to the public.

INTERNATIONAL

Treaties

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

Thailand is a party to a number of international treaties, bilateral investment protection treaties and double tax agreements, including those of the World Trade Organization.

Thailand is a member of the Association of Southeast Asian Nations (ASEAN), which, in December 2015, integrated its economy with nine other regional economies to form the ASEAN Economic Community (AEC). The five core elements of the AEC are:

- free flow of goods;
- free flow of services;
- free flow of investment;
- free flow of capital; and
- free flow of skilled labour.

ASEAN members have ratified enhanced dispute resolution mechanisms under the ASEAN Protocol on Enhanced Dispute Settlement Mechanisms (2004), and member states afford one another certain investment guarantees, as agreed within the ASEAN Comprehensive Investment Agreement (2009), with the goal of economic integration in line with the AEC blueprint. Thailand was chair of ASEAN in 2019.

ASEAN integration includes plans for the interconnection of current and planned pipelines among member states. Such integration will require regulators and governments to collaborate, creating a regulatory framework for trans-border trading energy and natural gas.

Thailand is not a party to the International Centre for Settlement of Investment Disputes 1965.

Thailand is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention).

Thailand is a party to the United Nations Convention on the Law of the Sea (UNCLOS) of 1982.

Thailand is not a party to the Extractive Industry Transparency Initiative index.

Foreign ownership

43 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?

Petroleum concessions may be 100 per cent foreign-owned. A foreign operator must have a registered branch or subsidiary in Thailand.

Retail petroleum businesses are subject to ceilings on foreign ownership of businesses under the Foreign Business Operations Act, BE 2542 (1999).

Oil refinery business is not restricted activity for foreign. In addition, it is a promoted activity under the Investment Promotion Act, BE 2520 (1977).

Cross-border sales

44 | Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

Cross-border sales or deliveries of crude oil and products are subject to Customs Department and, with respect to products, Excise Department regulation.

UPDATE AND TRENDS

Current trends

45 | What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

Thailand has not held a new bid round for petroleum exploration blocks in the past decade. The last two attempts in 2014 and in 2020 were withdrawn. It remains to be seen whether the PSC regime will be seen as an attractive contracting framework in light of current global petroleum price conditions.

Additional pending issues for Thailand include:

- a form service contract has yet to be announced;
- ongoing negotiations of the Thailand-Cambodia overlapping claims area; and
- developments with the decommissioning rules.

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GENERAL

Key commercial aspects

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

According to the Oil and Gas Authority (OGA), over 28.1Bboe have been recovered from the UK continental shelf (UKCS) to date. Production from the UKCS peaked in 1999, reaching 137 million tonnes. This was followed by a general decline, with production falling by 5 per cent each year on average. 2018 bucked this trend, with oil and gas production increasing more than 4 per cent from 2017, averaging 1.7Mmboe/d, before dropping slightly to 1.69Mmboe/d in 2019. Furthermore, the OGA has revised the production projections it made in 2018 upwards. Cumulative production from 2016-50 is now estimated to be 3Bboe higher than those projected in 2015. This is the equivalent of gaining four years of production.

In 2019, UKCS oil production rose to 1.10Mmbbl/d, an increase of 0.9 per cent from 2018. Gas production fell by 4.9 per cent to 0.58boe/d. This reduction in gas production is expected to continue on its downward path to 0.45boe/d by 2025.

Drilling activity across the UKCS fell by almost one-third between 2015-16. Activity remained low in 2017, with only 71 development wells being drilled. This picked up slightly in 2018 and 2019, recovering to 9 per cent below 2015 levels with 141 wells drilled (112 development, 16 exploration and 13 appraisal).

The UK has the sixth-largest total refining capacity in Europe and some of its six crude oil refineries are among the largest in Europe. The refining business has experienced several disruptions, including 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. Production of petroleum products by refiners increased by 0.7 per cent in 2019 compared with 2018.

In 2018, the industry invested £5.46 billion of capital expenditure, up from £5.05 billion the year before but still markedly lower than the £8.92 billion and £5.81 billion invested in 2016-17 as the wave of development capital tailed off (each of those figures being normalised to 2019 values). Operating costs expenditure dropped slightly on a normalised basis, from £7.36 billion in 2018 to £7.33 billion in 2019. A further increase is expected in 2020 as exploration and production companies look to carry out previously deferred activities, with a fall-off in operating costs thereafter.

Production tax receipts returned to positive figures in the 2017/18 and 2018/19 tax years, with HMRC generating £1.25 billion and £1.28 billion in those years respectively, having paid out £294 million on a constant currency basis in 2016/17. In those two more recent tax years, production tax receipts represented 0.21 per cent of all receipts.

The industry now supports the employment of around 259,900 people across the UK. The latest estimates of nearly 10,000 new roles in the sector in 2019 would represent the first growth in the workforce since 2014. Indeed, the pace of contraction has slowed significantly in recent years, with annual contractions of 4.2 per cent in 2017 compared to 15.6 per cent in 2016.

Five new fields (five oil, one condensate, no gas) were approved in 2019; this was a decrease on the eight approved in 2018, but up on 2017's three new fields.

Energy mix

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

With respect to domestic production, according to statistics published in 2020 by the Department of Business, Energy and Industrial Strategy (BEIS), oil represented 44 per cent of the UK's energy production in 2019: natural gas 29 per cent, coal 1 per cent, bioenergy and waste 11 per cent and electricity 15 per cent (consisting of wind, solar, natural-flow hydro and nuclear).

According to statistics published in 2020 by BEIS, oil represented 36 per cent of the UK's energy usage in 2019: natural gas 40 per cent, coal 3 per cent, bioenergy and waste 10 per cent and electricity 11 per cent (consisting of 6 per cent nuclear, 4 per cent renewables and 1 per cent imports).

The UK is now a net importer of all main fuel types, although it remains a net exporter of some products such as motor spirit. In 2019, 28 per cent of oil used and 49 per cent of gas used was imported.

For 2017, the contribution by the energy industries to the UK economy was 2.9 per cent of GDP (0.1 percentage points higher than the previous year). Of the energy total, in 2017 oil and gas extraction accounted for 29 per cent (up 3.4 percentage points on the previous year), electricity (including renewables) accounted for 42 per cent (down 2.9 percentage points) and gas accounted for 17 per cent (down 0.7 percentage points).

Government policy

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 the UK government'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 the 2008 Act was

to tackle climate change, reduce carbon dioxide emissions and ensure secure, clean and affordable energy. The Energy Act 2008 also provided 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 made a concerted effort to maximise recovery of oil from the UKCS through initiatives such as the fallow acreage initiative and the Code of Practice on Access to Upstream Oil and Gas Infrastructure on the UKCS (Infrastructure Code of Practice (ICOP)). 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 publication of the Wood Review in 2013, there has been a further shift in government policy towards maximising the recovery of hydrocarbons from the UKCS through the government entering into consultation with the industry.

The Energy Act 2016, which received royal assent in May 2016, formally established the OGA with the Secretary of State for BEIS as the sole shareholder, to replace the Department for Energy and Climate Change (DECC) as the entity responsible for petroleum licensing and regulation of the upstream oil and gas sector. The 2016 Act also enables a more comprehensive charging of the offshore oil and gas industry for permits and licences for environmental and decommissioning activity.

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. This implemented the EU Emissions Trading Scheme in the UK. More recently, mandatory reporting requirements were introduced for quoted companies incorporated within the UK to disclose details of their greenhouse gas emissions in their directors' report or in a stand-alone strategic review. The EU Emissions Trading Scheme will remain in place throughout the Brexit transition period, with the UK government having launched a consultation on its future position in May 2019. The consultation results are yet to be announced. In addition, the Energy Savings Opportunity Scheme Regulations (ESOS) 2014 have been introduced. This implements article 8 of the Energy Efficiency Directive 2012/27/EU. 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.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

The OGA has disabled its previous online register of all existing licences and their respective licensees (the Oil and Gas Portal, latterly the Energy Portal), in favour of a new open data platform. Like the Oil and Gas Portal, the new platform is publicly accessible at no cost. However, the OGA 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.

The OGA also maintains an index setting out oilfield ownership, operatorship and production, which is publicly accessible at no cost through its website at https://itportal.ogauthority.co.uk/information/licence_reports/databycompanyandblock.html.

However, as with licences and licensees, the OGA does not accept any responsibility for the accuracy of the information provided, and reports that anyone relying on the information does so at their own risk.

Legal system

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.

REGULATION OVERVIEW

Legal framework for oil regulation

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

The Petroleum Act 1998 governs oil and gas exploration and production activities in the UK. The Act vests ownership of petroleum in the UKCS in the Crown and empowers the Secretary of State 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 the OGA. The most recent Licensing Round (32nd) attracted 104 applications covering 245 blocks in the UKCS. This is an increase of more than eight per cent compared to block applications made in the 30th round held in 2017, which was the last non-frontier round. 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 the secretary of state 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, the OGA 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. This regime is planned to continue past the end of the Brexit transition period, thanks to the Pipelines, Petroleum, Electricity Works and Oil Stocking (Miscellaneous Amendments) (EU Exit) Regulations 2018.

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.

The Bribery Act 2010 came into force on 1 July 2011 and created a number of 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).

Expropriation of licensee interest

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.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

The government can terminate licences for breach, and there is indeed a process of surrender, but otherwise there can be no amendment without agreement. A petroleum licence is an instrument (a mix of contract and regulation) between the licensee and the Crown, that can only be amended (or, absent a breach, terminated) by agreement (as held in *R (Benjamin Dean) v The Secretary of State for Business, Energy and Industrial Strategy* [2017] EWHC 1998 (Admin)). The court noted that the problems for offshore licensees – and the consequent need for flexibility – would be much greater, as their costs are typically an order of magnitude greater than those onshore. The fact that there were certain consent stages in an offshore licence, which must satisfy further regulatory requirements before certain works can begin (eg, environmental impact assessments), did not alter the nature of the grant of exclusive property rights by the Crown and the incidental power to amend the licence by agreement. The only restriction was that no agreed variation to the licence could override those further regulatory requirements.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

Historically, DECC was 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. On 1 April 2015, certain functions passed from DECC to the OGA, a newly created executive agency of DECC structured as a company owned by the Secretary of State. DECC's role in licensing, exploration and development was transferred to the OGA, which is responsible for maximising the cost-effective recovery of oil and gas from the UKCS. In 2016, DECC was merged with the Department for Business, Innovation and Skills. In their place, BEIS was created.

In the event that a licensee breaches the terms and conditions of its licence, the Secretary of State may revoke the licence and the rights granted under it (without prejudice to any obligations and liabilities owed by the licensee). The Energy Act 2016 introduced a right for the OGA to issue a sanction notice on a person that it considers has failed to comply with a petroleum related requirement. Such a failure can include, inter alia, a failure to comply with the terms and conditions of an offshore licence. Prior to service of such sanction notice, the OGA must first serve a sanction warning notice (to include a specified period in which the recipient may make representations to the OGA). A sanction notice may take one of four forms:

- an enforcement notice (requiring the recipient to comply with the terms specified in the notice);
- a financial penalty notice (requiring payment of a fine not exceeding £1 million, although the Secretary of State reserves the right to increase such a limit to £5 million by way of new regulation);
- a revocation notice (revoking the recipient's licence); and, or
- an operator removal notice (requiring a licensee to remove its operator).

If a recipient fails to comply with an enforcement notice, the OGA may serve one of the other sanction notices. A recipient may appeal a sanction notice on the basis that there was no failure by it to comply with the petroleum related requirement and/or that the sanction given in the notice was unreasonable or not within the powers of the OGA. Sanction notices issued by the OGA may be published (subject to redaction of information that is commercially sensitive, not in the public's best interest or inappropriate).

Other regulatory bodies include the Health and Safety Executive (HSE), which is responsible for health and safety, and the Hazardous Installations Directorate, which is responsible for regulating and promoting improvements in health and safety across the offshore oil and gas sector. The HSE may also impose sanctions for breach of health and safety regulations.

Government statistics

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

The Office for National Statistics is the central data source, where the statistics for oil production, export and import are produced to a high professional standard. Since March 2019, the OGA has also published its own information (known as Oil and Gas Authority Open Data), generated via the National Data Repository contributed to by licensees since February 2019.

NATURAL RESOURCES

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

The Crown (through the Petroleum Act 1998) holds all title and rights to oil reservoirs within the UK and its territorial waters. The United Nations (UN) Convention on the Law of the Sea 1982 (UNCLOS) provides that the UK's territorial waters extend to 12 miles from the UK coast and the UKCS (as the UK's exclusive economic zone) stretches up to 188 miles beyond territorial waters. The OGA (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.

Where hydrocarbons are extracted pursuant to a licence within the UKCS, title to such hydrocarbons will transfer to the relevant licensee(s) as they pass the wellhead.

Exploration and production – general

12 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. The OGA 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. On 10 March 2016, the Onshore Hydraulic Fracturing (Protected Areas) Regulations 2016 were passed. The Regulations define 'protected groundwater source areas' in which hydraulic fracturing will be prohibited (above 1,200 metres in specified groundwater areas, national parks, areas of outstanding natural beauty and world heritage sites). In November 2019, the government announced a total stop to hydraulic fracturing following an OGA report on earthquake risks related to the practice.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

The OGA works with BEIS and regulates the exploration and development of the UK's offshore and onshore oil and gas resources. Previously, DECC had this responsibility.

From 1 April 2015, many of the regulatory functions of DECC were passed to the OGA. This was in line with recommendations made by the Wood Review (the Wood Review can be found at www.gov.uk/government/groups/wood-review-implementation-team). Regulation is through a licensing regime rather than a production sharing arrangement. Applications for a licence are made (either individually or through a joint venture) to the OGA 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.

The timing for the application will vary depending on the size of the licensing round. A large licensing round with many licences and applicants, some of which are subject to Appropriate Assessment (defined below), can take up to two years. The 28th Seaward Licensing Round took five months from the application closing date to offer the main tranche of awards, with the final awards being made 15 months from the application closing date. In contrast, licences awarded following the most recently completed 31st Licensing Round were awarded within six months of the application closing date.

'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 30th Seaward Licensing Round, there were 61 blocks identified as requiring further environmental assessments prior to decisions on whether to grant licences.

At present, there are two types of offshore licence awarded by the OGA – 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.

Prior to the introduction of the innovate licence there were three subcategories of seaward production licence. The most common of these was the 'traditional licence'. Potential applicants must have been able to demonstrate financial, technical and environmental capability in order to be successful. The 'promote' licence (introduced in 2002) was 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) recognised the difficulties in sourcing oil in remote areas of the UKCS (such as the deep waters west of Shetland) and permitted screening over a large area to look for a wide range of prospects.

Onshore production is governed by the petroleum exploration and development licence, which follows a similar form to the offshore licences described above.

Government participation

14 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.

Royalties and tax stabilisation

15 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are 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. On 1 October 2015, the Oil and Gas Authority (Levy) Regulations 2015 came into force making provision for a levy to be imposed on offshore licence holders between October 2015 and March 2016. The levy, to be set annually, is to ensure that the OGA has the resources to meet the Wood Review's aim of maximising economic recovery from the UKCS. New regulations were introduced in 2016, which set out the rate of the levy payable on an annual basis from April of each year. The levy amount for the period from 1 April 2020 to 31 March 2021 is:

- microbusiness and promote or innovate phase A licensee (non-producing) – £1,128.18;
- microbusiness and innovate phase B licensee (non-producing) – £2,256.37;
- other non-producing and innovate phase C licensee – £11,281.83;
- offshore production licence – £94,055.20; and
- offshore exploration licence – £11,281.83.

The OGA levy does not apply to the onshore sector.

A climate change levy has also been set, and rates from 1 April 2020 are 2.175 pence per kilogram for any petroleum gas or other gaseous hydrocarbon supplied in a liquid state.

There are no tax stabilisation measures in place.

Licence duration

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

From 1 April 2015 numerous DECC regulatory functions were passed to the OGA; therefore, the OGA is responsible for the administration of licences. Except in special circumstances, production licences run for three successive periods (or terms). Subject to obtaining agreement from the OGA, the duration of each term can be varied.

Offshore licences

As from the 29th licensing round, the 'innovate licence' now replaces several subcategories of Seaward Production Licence – the Traditional, Promote and Frontier licences. In successive licensing rounds, all Seaward Production Licences will be innovate licences. 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.

In cases where an applicant for a licence does not propose to carry out any exploration at all, but proposes to develop an existing discovery or undertake redevelopment of a field, a licence may be awarded with no initial term. This is called a 'Straight to Second Term' licence.

Offshore innovate licence

The innovate licence was introduced by the OGA to offer flexibility in the duration of the initial and second terms of the production licence. Applicants for an innovate licence are able to propose the duration of the initial and second terms and, among the combinations that may be proposed, are those that represent durations associated with each of the four older licence types (see below).

As for the older licence types, an innovate licence may only continue from the initial term into the second term if (among other things) the initial term's work programme has been completed and 50 per cent of the initial acreage has been surrendered.

Traditional licences

The duration of a traditional licence was 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 OGA and relinquished a minimum of 50 per cent of the acreage under the licence. If, during the second term, the Secretary of State has approved the development plan and all of the acreage outside that development has been relinquished, the licence may continue into the third term. The Secretary of State may exercise its discretion to extend the third term beyond the prescribed 18-year period if production is ongoing but the OGA reserves the right to reconsider the provisions of the licence, particularly the acreage and rentals, before doing so.

Frontier licences

The duration of a frontier licence was 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. The OGA 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 different type of frontier licence designed for the areas west of Scotland was introduced in the 26th licensing round announced in January 2010. This frontier licence differs from the original frontier licence in that the first of its three terms is nine years. This is in recognition of the particularly challenging nature of the geographical area where it applies and the relative scarcity of geophysical data. Owing to the nature of the region, additional requirements apply to this type of licence.

Promote licences

The duration of a promote licence was split into the same successive periods as a traditional licence. However, the licence will expire at the end of the second year if the OGA 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 the OGA 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

Onshore (landward) production licences follow the same pattern as with Seaward Production Licences. They are known formally as Petroleum Exploration and Development Licences. 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.

Extent of offshore regulation

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

The regulatory regime extends to the UK's territorial waters and the UKCS. UK territorial waters extends from the low water mark (established by the Territorial Waters Order in Council 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 Coastal 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.

Onshore offshore regimes

18 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 Scottish land law in Scotland and English land law in England and Wales (as exemplified by *Bocardo SA v Star Energy UK Onshore Ltd* [2010] UKSC 35, 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 SA 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.

Authorised E&P entities

19 | 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 the OGA 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. The OGA 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.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

The terms of the licence require that only an entity approved by the Secretary of State may act as operator. Approval will not be refused provided the intended operator is competent to act as operator. Approval may be revoked at any time by notice to the licensee where the Secretary of State considers the approved person is no longer competent to act as operator.

Joint ventures

21 | 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 and the percentage interests of each of the parties, and govern the day-to-day operational activities carried out by the operator.

Reservoir unitisation

22 | 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, the OGA 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 redetermination 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.

Licensee liability

23 | 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, under common law any claim for damages must be reasonably foreseeable, arise naturally from the breach and the parties would, at the time when they entered into the contract, have reasonably expected the probable result of such a breach.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

As a general rule, the OGA 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 will also be required from a new parent company if, prior to an 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. 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 and all work commitments.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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

There are no local content requirements in the United Kingdom.

Social programmes

26 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

None. However, the International Petroleum Industry Environmental Conservation Association (the global oil and gas industry association for environmental and social issues) aims to assist countries in developing natural structures and capability for oil spill preparedness, with four regional programmes developed to meet those objectives.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 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 licence assignment or for a change of control of the licensee. The licensee shall not, except with the consent of the Secretary of State 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. The OGA operates an e-licence administration system (the Petroleum E-Licensing Assignments and Relinquishments System (PEARS), now part of the Energy Portal) 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 through PEARS and the number of other applications being processed. In addition, as part of a general drive by the OGA 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 the OGA through the system about any discrepancies and upload supporting documentation for the OGA to consider; and, if appropriate, implement a correction, which can also affect timing. The OGA 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 require an onward change of control if a licensee transfers into unapproved hands (and may revoke the licence if the onward transfer is not made), so obtaining consent is paramount. When considering an application for a change of control, the OGA'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 (or assets reduced prior to the change of control, eg, by means of a pre-completion dividend) to enable it to meet its licence obligations and will become reliant upon the financial support of its new corporate parent, the OGA will require a parent company guarantee from the new corporate parent to replace any existing source of funding. The existence of this power can result in a request for comfort that the Secretary of State will not exercise it. The OGA is generally willing to consider such requests.

There are no pre-emptive rights reserved to the government.

Approval to change operator

28 Is government consent required for a change of operator?

Secretary of State approval 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 through PEARS.

Transfer fees

29 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), land transaction tax (in Wales) or stamp duty land tax (in the rest of the United Kingdom) 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. The OGA will charge certain fees to process the relevant application through PEARS.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

Ownership of facilities and equipment for oil exploration, development and transportation activities is not restricted within the UKCS. Facilities and equipment relating to a particular licence area are usually owned by the relevant licensees; however, they can be independently owned.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 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 (article 60(3)), International Maritime Organization Guidelines and Standards 1989 and 1992, OSPAR Convention 1992 (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 the OGA or 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 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. 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.

In the 2017 Autumn Budget, the Chancellor introduced a new mechanism for deals that complete on or after 1 November 2018. An innovative concept known as 'transferable tax history', it allows UK oil producers selling North Sea oil and gas fields to transfer some of their corporate tax payment history to the buyers of those fields. The buyers will then be able to set the costs of decommissioning the fields at the end of their lives against this tax history, to the extent that the buyer has insufficient tax history to fully utilise the tax losses generated through decommissioning. This can reduce the risk to new entrants of bearing higher effective decommissioning costs, as a result of their not having a long history of tax payments.

Security deposits for decommissioning

32 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

Regulation

33 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 (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 United Kingdom's neighbours are parties to the ECT. Offshore pipelines require the approval of the OGA (a pipeline works authorisation) before going ahead, and in granting approval the OGA 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 in 2011 and again in 2019) 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 in 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.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Not applicable. Under the licensing regime in UKCS there are no production sharing contracts or recoverability of costs.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

The Health and Safety at Work etc Act 1974 (HSWA 1974) 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. HSWA 1974 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 was the Offshore Installations (Safety Case) Regulations 2005, which was 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, that is, to oil and gas activities in internal waters. These Regulations are supplemented by a suite of offshore-specific legislation, which includes, among many other relevant regulations:

1 the Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995;
2 the Offshore Installations (Prevention of Fire and Explosion and Emergency Response) Regulations 1995; and
3 the Offshore Installations and Wells (Design and Constructions, etc) Regulations 1996.

Amendments to (1) and (2) were 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 Offshore Safety Directive Regulator (OSDR). 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 England and Wales, the HSE can investigate and prosecute companies directly for breaches of health and safety legislation, whereas in Scotland, the HSE's power extends to investigations but prosecutions lie in the hands of the procurator fiscal, to whom the HSE reports. In 2014, the OSDR was created to oversee industry compliance with the OSD (see below). Non-compliance with either the offshore-specific legislation or HSWA 1974 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 HSWA 1974 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 also carry an unlimited fine.

New sentencing guidelines, the 'Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines', have been introduced following closure of a consultation in February 2015. The guidelines are applicable to England and Wales only; however, the Scottish courts have already begun to apply the English guidelines. The guidelines introduced a very significant increase of the level of fines imposed for breaches of health and safety.

On 18 July 2013, the new EU directive (OSD, see above) 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 28-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 which were transposed into UK legislation in 2015 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 EU Commission will support the promotion of the highest safety standards across the world.

The UK is not currently expected to diverge from its implementation of the OSD following the end of the Brexit transition period.

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 to 370km offshore). The transposition of the OSD was in stages:

- by 19 July 2015, member states had to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive;
- by 19 July 2016, laws, regulations and administrative provisions were 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 were to apply the laws, regulations and administrative provisions to all existing installations.

The Environmental Damage (Prevention and Remediation) (England) Regulations 2015 came into force on 19 July 2015. Similar legislation was introduced in Wales on the same date. These regulations amend the existing Environment Damage Regulations (England and 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 the form of the Environmental Liability (Scotland) Amendment Regulations 2015.

The environmental impact of offshore exploration and production activities is regulated by BEIS. 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 HSE for approval. An OPEP must, among other things, provide evidence of financial responsibility and a description of the potential worst-case release of oil to the sea from the installation or connected infrastructure and is required for both production and non-production installations, as well as pipelines and oil handling facilities. Regulatory approvals and consents are withheld until the OPEP is approved. An oil record book must be maintained at all times.

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 from a well 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.

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. The Offshore Combustion Installations (Pollution Prevention and Control) Regulations 2013 revoked the Offshore Combustion Installations (Prevention and Control of Pollution) Regulations 2001. As the Industrial Emissions Directive (IED) provisions in respect of the offshore sector mirror those of the Integrated Pollution Prevention and Control (IPPC), DECC considered that the new 2013 regulations did not place any additional administrative or compliance burdens on offshore operators and any extra obligations (eg, preparation of publicly available inspection reports) would be borne by DECC (now the OGA). 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 BEIS, the OSDR the Environment Agency (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 (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 the OGA. Relevant activities for the purposes of the regulations includes drilling of wells, construction and installation of production facilities and pipelines in the UK territorial sea and on the UKCS.

Climate change and marine strategy and management

The Climate Change Act 2008 (CCA 2008) sets targets for the reduction of greenhouse gases (GHGs) for the UK. The provisions of CCA 2008 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 and outlined an initial assessment of the UK seas and characteristics, targets and indicators of good environmental status. 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 2015, the Department for Environment, Food and Rural Affairs published a consultation on proposals for a UK programme of measures to maintain or achieve good environmental status in UK waters by 2020. Part III was published in December 2015 and is the final part of the marine strategy; it outlines measures that contribute towards good environmental status.

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 planning authority that 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.

In December 2015 the Paris Agreement was adopted by the UK as a party to the UN Framework Convention on Climate Change; it came into force in November 2016. As part of the Agreement, the UK met its agreed and legally binding target of generating 15 per cent of its energy from renewable sources by 2020, and intends to continue decarbonising the energy sector in the coming years to meet a target of eliminating net carbon emissions by 2050.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The OGA does not apply specific standards to those employed in the oil industry. From a European perspective, as a member of the European Union, European Economic Area nationals are currently permitted to live and work in the UK without being discriminated against on the basis of nationality. It is likely that there may be some restrictions on such free movement at the end of the UK's transition period following its exit from the EU (expected in January 2021). 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 UK Visas and Immigration. Penalties for non-compliance include civil penalties of £20,000 per illegal worker or unlimited fines or

imprisonment for up to two years 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 was abolished for claims presented on or after 1 October 2015.

There is no prescribed training fund for the local workforce.

TAXATION

Tax regimes

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

There are two elements of taxation to which companies in the oil industry may be subject – ring fence corporation tax (RFCT) and a supplementary charge (SC). Following the 2016 Budget, petroleum revenue tax (PRT) was effectively abolished. HMRC Large Business Service – Oil & Gas Sector (formerly the Oil Taxation Office) administers the taxation regime.

PRT

PRT was a field-based tax charged on the profits arising to each participant from the production of oil under a licence. The PRT tax rate was permanently reduced to zero per cent as part of the 2016 Budget to simplify the regime for investors and level the playing field between investment opportunities in older fields and infrastructure and new developments. The change took effect 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 19 per cent for non-ring-fence profits and 30 per cent for ring-fence profits.

Despite the lower main rate of corporation tax (from 26 per cent in 2011 to 19 per cent in 2017, and scheduled to fall to 17 per cent from 2010), the rate currently remains 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 10 per cent with effect from 1 January 2016 (previously 20 per cent). The effective tax rate on ring-fenced activities is therefore 40 per cent, which may be further reduced by availability of the 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 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. As part of the 2016 budget, these allowances were extended to include tariff income.

Recent developments

As mentioned above, an innovative new mechanism known as transferable tax history was made available in relation to transactions completed on or after 1 November 2018. It allows sellers to transfer a portion of their tax history to buyers of North Sea assets, with the aim of reducing the risk to buyers of late life assets of bearing higher effective decommissioning costs as a result of having insufficient tax payment history.

COMMODITY PRICE CONTROLS

Crude oil mining

38 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

Competition enforcers

39 What government bodies have the authority to prevent or punish anticompetitive 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 brought 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 prosecution 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 anticompetitive 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.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

Except for 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 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 (distortion of competition in the United Kingdom) and Chapter 2 (an abuse of a dominant market position) of the Competition Act 1998 (mirroring the provisions in article 101(3) and article 102 of the TFEU) 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. Companies found to have breached the Chapter 1 or Chapter 2 prohibitions may be liable to a fine of up to 10 per cent of worldwide turnover.

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.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

Seismic data acquired and owned by oil and gas companies (typically under exploration licences) 'data' must be preserved (Model Clause 29(2): 'The licensee shall keep within the United Kingdom accurate geological plans and maps relating to the licensed area and such other records in relation thereto as may be necessary to preserve all information which the licensee has about the geology of the licensed area).'

It is a term of the licence that data must be delivered to BEIS on demand.

BEIS is entitled to release data upon termination of the licence or (20th round licences and later) three years after its acquisition, whichever is earlier.

Under Petroleum Operations Notice 9, a licensee has certain reporting obligations with regard to (among other things) seismic data. The notice applies to all seaward surveys and all exploration, appraisal and development wells in seaward areas.

BEIS and Oil & Gas UK also published the Guidelines for Proprietary Seismic Data Release. Under the Guidelines, DECC can also require licensees to release data directly to third parties, which is deemed to be equivalent to a request from BEIS for the data and the release of data by BEIS.

INTERNATIONAL

Treaties

42 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 Geneva Convention on the Continental Shelf 1958 and the UN Convention on the Law of the Sea 1982, 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 Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation.

With regard to the recognition and enforcement of foreign arbitral awards, the United Kingdom is a party to:

- the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), subject to the reciprocity provision that the UK courts only recognise and enforce awards made in the territory of another contracting state;
- the Geneva Convention on the Execution of Foreign Arbitral Awards 1927, which covers a small number of additional countries that are not also signatories of the New York Convention; and
- the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1966.

Arbitration proceedings are governed by the Arbitration Act (International Investment Disputes) 1966, Part III of which deals with international awards. Some types of arbitral awards are enforceable, including domestic money awards, and domestic declaratory awards.

Foreign ownership

43 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?

While there is no specific limitation to foreign companies, the OGA has the power to make a public interest assessment of the impact of a foreign company on the market. Further, the OGA requires that, to be a licensee, a company must have a place of business within the United Kingdom. In assessing the suitability of a candidate to act as an operator, the OGA has stated that the location of the company's operations may be a factor in assessing its ability to run operations effectively.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

Under UK law, cross-border transactions of this nature are not governed by any specific legislation or rules. There are no volumetric supply obligations for the local market that prevail over the rights of the oil producer.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

In general, the oil market has remained characterised by uncertainty in global supply and price volatility, with dated Brent averaging US$54.71, US$71.34 and US$64.28 per barrel over 2017, 2018 and 2019 respectively. The effect of the covid-19 pandemic on transport, travel and consumer demand, together with disputes between OPEC and Russia, led to Brent prices falling below US$20 at points in 2020, with futures contracts for West Texas Intermediate trading at negative prices in April 2020.

The United Kingdom ceased to be an EU member state on 31 January 2020. A transition agreement maintains the status quo for the rest of 2020. Depending on the nature of the agreement reached between the United Kingdom and the European Union regarding the future of the relationship, and trade deals negotiated with other countries, the impact of Brexit on the oil industry is expected to be limited. However, specific issues are likely to impact the sector generally, including potential difficulties in attracting highly skilled people and a flexible workforce that can be moved efficiently and quickly from project to project and possible disruption to cross-border trade of oil-based goods. In the short term, the fall in sterling as a result of Brexit led to UK exports becoming more competitive overnight on the basis that oil trades in US dollars and many North Sea costs are in sterling. Analysis shows that the cost of trade for the whole oil and gas industry could increase by as much as £500 million per annum if the UK reverts to World Trade Organization rules or could be reduced by around £100 million under optimal trade agreements.

Following initial uncertainty following the UK's service of its withdrawal notice to the EU, mergers and acquisitions activity gradually increased and the value of UK upstream M&A deals announced in 2017 surpassed US$8 billion. M&A activity continued during 2018, although at a lesser level than 2017, with approximately US$6.7 billion of UK-related M&A activity in the sector in 2019. Generally, there has been a trend towards divestment from majors (although majors are retaining interests in key strategic assets) and investment from smaller independent companies through private equity finance. Counterparties have often reached innovative commercial deals to overcome potential barriers such as decommissioning liabilities.

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GENERAL

Key commercial aspects

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 and Apache. Midstream specialists include Kinder Morgan. Refining operations are conducted by Phillips 66, Valero, Sunoco, and PBF Energy. 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.

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 petroleum to more than 5,300 retail outlets and owns interests in three refineries in the United States.

'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 of crude oil and lease condensate at 47.1 billion barrels for year-end 2018, representing an increase of 12 per cent over year-end 2017 estimates.

Energy mix

2 | What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

Oil and natural gas provided an estimated 67 per cent of US energy needs (36 per cent oil and 31 per cent natural gas). Comparatively, coal provided 13 per cent and nuclear provided 8 per cent. Renewables provided 11 per cent. Regarding non-conventional sources, the EIA projects renewables consumption will continue to increase up to 2050.

In 2018, the United States consumed an average of 20.5 million barrels per day (b/d) of petroleum. The transport sector accounted for 69 per cent of oil consumption, primarily in the form of petrol. The industrial sector consumed another 25 per cent for heating, diesel engines and as petrochemical feedstock. Only 1 per cent of US electric power generation is fuelled by petroleum.

US oil production has grown rapidly in recent years. In 2018 and 2019, the United States was the top crude oil producer in the world. However, volatility in the global oil market during the first quarter of 2020 – driven in large part by the dispute between Russia and Saudi Arabia over production cuts, and sharp demand decreases caused by covid-19 pandemic travel restrictions – has caused the EIA to adjust its short-term US production projections downward. The EIA now forecasts that the US will return to being a net importer of crude oil in the third quarter of 2020, and remain a net importer during 2021. If the EIA forecast is realised, 2020 will be the first annual production decline in the US since 2016.

Government policy

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 US energy policy. At the federal level, Congress has enacted a series of acts whose titles include 'energy policy', and the President has issued executive orders of a similar nature. The Department of the Interior, the Department of Transportation, the Department of Energy and the Environmental Protection Agency 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, building on energy-related laws and orders of the state legislatures and governors.

There are several separate principles running through enactments of these bodies. First, since the 1970s, there has been a stated focus on increasing the energy independence of the United States. The Trump administration issued an executive order calling for the 'clean and safe development' of domestic energy resources, including (in the context of electricity production) coal, natural gas, nuclear material, hydropower and other domestic sources including renewables. But energy independence has been advocated during administrations of both political parties. Economic and technological developments, such as responses to market prices and the emergence of hydraulic fracturing, have had more impact on energy imports than have the statutes and regulations. Over the same period, there has been a focus on energy efficiency, such as the increase of the fuel economy standards for motor vehicles. The record on encouraging renewable sources and clean technology is mixed, with large but not always consistently maintained government investment and subsidy programmes in targeted fields such as nuclear, biofuels, wind, solar and geothermal energy.

Overlaying policies regarding energy sources are the regulation of environmental aspects of oil and gas production and consumption. Traditional emissions regulation has been supplemented by policies at the federal and state levels addressing climate change and the emission of greenhouse gases. While the Trump administration has overturned a number of administrative rules in this field, others remain, such as the endangerment finding that led to regulation of automobile exhaust emissions. It is in this arena that the regulatory powers of the individual states, particularly in the west and north-east, will play an important role.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

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. There is no consolidated ownership or operatorship register for properties. 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 public records is without cost, however, there is usually a charge for obtaining copies of the documents.

Legal system

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. The US Constitution gives specific delegated powers to the federal government, with all power not delegated reserved for the states. Each of the 50 states has its own constitution, and all but one (Louisiana) operate on a common-law system. At each level of government (federal, state and local), there are forms of legislation and comprehensive systems of administrative regulation and rule-making.

Contract and property rights may be enforced through lawsuits brought in state or federal courts, or by agreement in court-administered or private arbitration. Federal courts have jurisdiction only with respect to certain types of cases. State courts have jurisdiction to hear the majority of cases that involve private oil and gas rights. In the federal court system, the trial courts are called district courts and the 13 appellate courts are called circuit courts. The highest federal court is the Supreme Court, which is the final arbiter of federal constitutional questions. State judiciary systems typically have a similar structure beginning with lower trial courts, followed by one or more appellate courts. Only certain cases heard and decided in state courts are eligible for review by the US Supreme Court.

The United States also has federal courts that handle specific matters, such as bankruptcy, government contract claims and international trade. The United States is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and other conventions for recognition of foreign judgments, subject to specified exceptions.

REGULATION OVERVIEW

Legal framework for oil regulation

6 | Describe the key laws and regulations that make up the principal legal framework regulating oil and gas 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 principal laws that regulate onshore oil and gas activities on federal lands are the Mineral Leasing Act of 1920 (as revised by the Federal Onshore Oil and Gas Leasing Reform Act of 1987), the Mineral Leasing Act for Acquired Lands of 1947, and the Federal Land Policy and Management Act of 1976. For offshore activities on federal property, the primary governing law is the Outer Continental Shelf Lands Act. In addition, oil and gas activities on federal property are generally subject to the National Environmental Policy Act, which requires preparation of environmental impact statements prior to leasing actions, as well as several environmental regulations such as the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act. Additional industry-specific federal statutes include the Federal Oil and Gas Royalty Management Act of 1982 (as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996), which governs lease and royalty agreements.

State laws, such as the Texas Natural Resources Code and the California Public Resources Code, govern exploration, production and transportation on state-owned land, including state offshore property and privately owned land.

Expropriation of licensee interest

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 because of 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.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

All leases issued by the government on federal public lands are subject to specific lease terms, including terms that provide for the forfeiture of the lease if certain violations occur. Some specific violations that may result in the forfeiture of a federal oil and gas lease pursuant to its own terms include failing to prevent waste of oil or gas, destruction or injury of the oil deposits and serious threat of harm to humans, the environment, or national security.

In addition, leaseholders of producing leases have a general obligation to comply with all applicable laws, regulations and lease terms. Failure to do so can result in judicial forfeiture and cancellation of the lease through an appropriate proceeding in a US district court. Leaseholders of non-producing leases may have their leases cancelled through an administrative process if the default continues for 30 days after notice of non-compliance.

Regulators

9 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

Within the DOI, the following bodies regulate exploration and production activities:

- 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. Sanctions for non-compliance with applicable laws or lease terms can range from revocation of contractual entitlements to fines and penalties. In egregious circumstances, non-compliance may result in criminal prosecution and liability.

Government statistics

10 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

Title

11 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

In the United States, 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.

The stage at which a title is transferred depends on state law and is generally split between 'ownership-in-place' states such as Texas, and 'non-ownership' states such as California and Louisiana, where ownership does not transfer until extracted.

Exploration and production – general

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

In 2019, five states and federal offshore waters supplied 84 per cent (10.3 million b/d) of US crude oil production. Oil production was predominantly concentrated in Texas (41 per cent), federal offshore waters (15 per cent), North Dakota (11 per cent), New Mexico (8 per cent), Oklahoma (5 per cent) and Colorado (4 per cent). Total US crude oil production increased approximately 10 per cent in 2019, although production in 2020 is projected to decrease for the first time since 2016.

Almost all existing offshore leasing is in the Gulf of Mexico. Included in the Outer Continental Shelf Oil and Gas Leasing Program for 2017-2022 were 11 potential lease sales in four outer continental shelf planning areas:

- the Central Gulf of Mexico;
- the Western Gulf of Mexico;
- the portion of the Eastern Gulf of Mexico not under congressional moratorium; and
- the Cook Inlet planning area offshore Alaska.

However, in 2017, President Trump issued an executive order requiring the DOI to revise the 2017-2022 five-year offshore oil and gas leasing programme to include lease sales in additional planning areas, such as the Mid- and South Atlantic and the Pacific region, and to increase the number of scheduled sales under the programme. The public comment period on the new proposed leasing programme closed in 2018, but finalisation of the revised leasing programme has been indefinitely placed on hold by BOEM due to a court decision that affected the availability of planning areas that were included in the draft plan.

Onshore, the BLM is charged with managing and conserving federally owned land, including oil and gas resources. Unless they are specifically carved out of the leasing programme, all BLM-managed lands and national forests are open to leasing. Leasing is generally not permitted in the national park system, in national wildlife refuges, in the wild and scenic river systems or in wilderness areas. Leasing in national forests requires permission from the US Forest Service of the Department of Agriculture. The BLM reviews and approves permits and licences for companies to explore, develop and produce oil on federal lands. Once projects are approved, the BLM enforces regulatory

compliance. Federal and state agencies can also impose drilling restrictions on particular lands on environmental, military or other grounds.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

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. Depending on state law, such a lease may grant ownership of oil and gas in place or may grant only the right to explore for and extract oil and gas and the ownership of hydrocarbons actually produced. 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. Comparable state agencies award leases for state-owned land.

The terms of the lease and applicable law limit leaseholder activities. Aside from the bid amount, which is determined by the bidder, most government leases are non-negotiable. 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.

Government participation

14 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.

Royalties and tax stabilisation

15 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are 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 until the 1970s, although now rates such as three-sixteenths 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 depending on how deep the waters are and 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. In 2017, the BLM amended the federal oil shale regulations to give the DOI more flexibility in setting rates lease-by-lease. The DOI sets the minimum royalty rates for federal commercial oil shale leases, and the amended rule gives the DOI authority to set rates based on consideration of all relevant factors. In 2018, the DOI rejected a recommendation to lower the minimum royalty rate to be more consistent with the private market.

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 (hence, no royalties). There are no standard stabilisation provisions in the most common leases for new taxes or other impositions.

Licence duration

16 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. Primary terms for shale leases tend to be shorter, at about five years. 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 because of force majeure.

Extent of offshore regulation

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

The Federal Submerged Lands Act establishes state jurisdiction over submerged lands extending three nautical miles (3.5 statutory miles or 5.6km offshore (except Florida and Texas 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 Outer Continental Shelf (OCS)).

Onshore offshore regimes

18 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. There are a variety of differences and similarities between the two regimes.

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. In addition, a few states and localities have prohibited hydraulic fracturing altogether. This is in contrast to the federal government's reported plans to relax federal rules regarding energy exploration and production.

Several state regulatory agencies are considering issuing new rules regulating oil and gas drilling, mainly as a result of shale oil and gas drilling. A topic of recent concern relates to increased seismic activity experienced in areas of hydraulic fracking operations and caused by the injection of waste water and other chemicals.

Authorised E&P entities

19 | 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.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

While the government may not select or remove operators, it can impose penalties and pursue injunctive relief in a civil action against the operation and operator (including temporary restraining orders) if necessary to enforce lease terms and applicable law. In effect, by shutting down the operation itself, the government can incentivise leaseholders to remove and replace poorly performing operators. Further, the government can cancel federal leases if laws and lease terms are violated.

Joint ventures

21 | What is the legal regime for joint ventures?

The United States 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 American Association of Professional Landmen forms. The accounting procedure under a joint operating agreement is often that specified by the Council of Petroleum Accountants 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 United States.

Reservoir unitisation

22 | 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 of federal lands requires DOI approval. 'Pooling' sometimes refers to the conduct of drilling for resources under multiple parcels to comply with well spacing or other permit conditions. Both pooling and unitisation can be voluntary or compulsory under certain state statutes.

Licensee liability

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

While there are limits under some statutes and contract provisions 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.

As part of consolidated legal proceedings in the Deepwater Horizon oil spill of 2010, a federal court had the opportunity to consider whether private contractual indemnities covering gross negligence were enforceable. The court found that such indemnities were enforceable, except when applied to punitive damages or federal civil penalties.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? 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. The BLM regulations for onshore operations require surety or personal bonds to ensure compliance with requirements. 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

Minimum requirements

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

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. If a country imposed local content requirements as a condition of investment, that could conflict with obligations under World Trade Organization (WTO) agreements and free trade agreements. In 2019, an Executive Order was issued mandating federal departments and agencies to encourage 'buy American' practices for private recipients of federal financial support.

State and local laws encourage local hiring.

Social programmes

26 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

Where an oil development project in the United States is being undertaken with assistance from a federal or state entity, there may be incentives or requirements for the operator to participate in regional hiring or job training programmes.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 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 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 the BLM. The 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.

Approval to change operator

28 Is government consent required for a change of operator?

The new operator on a lease must notify and obtain approval from BOEM or the 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.

Transfer fees

29 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, the BLM (for federal 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 an initial application for a lease or grant.

BLM, BSEE and BOEM regulations relating to assignments and transfers do not contain provisions regarding applicable taxes.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

Because oil industry activities in the United States are generally conducted by private entities, title to the associated facilities and equipment is determined by private contracts among the vendors, operators and co-owners.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 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 wells, structures and pipelines on terminated leases and decommissioning pipelines on terminated pipeline rights of way.

The BLM regulations govern abandonment of oil and gas facilities on federal lands. A plan for plugging and abandoning of wells must be approved by the BLM in advance. In addition, any pipelines or other facilities must be removed within a reasonable time after the expiry of lease or right-of-way grant and the area must be remediated and restored as determined by the BLM. As an alternative, the BLM may allow certain facilities to remain if harm will be caused by removal. Failure to remove facilities may result in the BLM claiming the equipment for the United States or charging the operator for any removal and restoration conducted by the agency.

On federal OCS lands, decommissioning is governed by the 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 pursuant to a programme permitted by the Energy Policy Act of 2005. 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. The BSEE may also approve conversion of a platform to an artificial reef under the federal Rigs-to-Reefs programme if a state agency accepts title and liability for the

structure. By mid-2018, approximately 530 platforms had been reefed in the Gulf of Mexico under this programme.

Lessees, owners of operating rights and holders of a right of way are jointly and severally liable for decommissioning obligations. In recent years, with the decline of oil prices and advanced ageing of certain fields, the looming cost of decommissioning has become a concern for operators and the government. This concern is amplified in 2020 with the covid-19 pandemic and production cut disputes driving down oil prices to their lowest levels since 2016. Between 2015 and 1 April 2020, approximately 215 US oil and gas companies (onshore and offshore) filed for bankruptcy, with a total combined unsecured debt exceeding US$70.3 billion. This rate of insolvency among exploration and production companies prompted BOEM to re-evaluate its bonding requirements for offshore lessees to secure future decommissioning costs, although no final changes to the requirements have been implemented.

Security deposits for decommissioning

32 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, the 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. The agency solicited public comment on a potential increase in minimum bonding amounts to reflect inflation and higher decommissioning costs, but the agency withdrew the proposed rule. Bond coverage is required prior to BLM approval of any lease development activities and the requirement may be satisfied by a surety or personal bond posted by the lessee, sublessee or operator. In late 2018, BLM issued an instruction memorandum updating its policy on bond adequacy reviews, and requiring its field offices to review existing oil and gas bonds to determine whether the bond amount appropriately reflects the level of potential risk posed by the operator. However, a report by the Government Accountability Office in September 2019 found inconsistent application of the instruction memorandum, and concluded that the bonds held by BLM for well reclamation are insufficient – averaging only approximately US$2,122 per well as of 2018 – when compared to average reclamation costs ranging from US$20,000 to US$145,000 per well.

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 the BSEE of the lessee's decommissioning liability and an assessment by BOEM of the lessee's financial resources. In order to create better estimates of decommissioning costs, the BSEE issued a final rule in 2015 requiring lessees to submit certified summaries of the actual cost of decommissioning activities such as well plugging, platform removal and site clearance within 120 days of completion. In 2016, BOEM issued a Notice to Lessees (NTL) overhauling how it would interpret its supplemental bonding regulations and discontinuing to a significant extent the amount of self-insurance lessees could use to secure obligations under the lease. In 2017, BOEM temporarily suspended implementation of the NTL, and in late 2019 the BOEM and BSEE were in the process of developing a joint rule to revise existing financial assurance regulations for OCS operations.

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

Regulation

33 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 through 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. In addition, pipelines face a number of federal, state, and local permitting requirements. If the pipeline passes through tribal lands, separate permitting rules will apply.

At present, trucking and marine vessel transportation prices are not regulated, although safety, health and environmental regulations apply generally to pipelines, vessels and trucks. With the increasing use of rail for shipping crude oil, the DOT has focused on the safety of oil shipments by rail. Persons who ship crude oil by rail are required to ensure that the material is properly tested with respect to flash point and boiling point. The DOT also has regulations designed to prevent accidents, mitigate consequences in the event of an accident and support an emergency response. In addition, the Fixing America's Surface Transportation Act includes numerous provisions related to rail safety, such as enhanced tank wagon standards and a mandatory phase-out schedule for older tank wagons.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Unlike countries in which all mineral resources are owned by the state, in the United States, the federal government only owns production by virtue of private development of its interests in the continental shelf and on federal lands. These interests are generally auctioned and leases are awarded to the highest qualified responsible bidder. As such, there is not a general programme with the cost recovery features of a production-sharing contract.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

Upstream oil-related facility operations are subject to many environmental laws and regulations, including federal, state, and local requirements. New or modified exploration or development operations usually need local land use development permits as well as drilling and operating

permits. Many projects must undergo a thorough environmental impact review under NEPA or a comparable state law. Such reviews can be done on a project-level, which focuses on the environmental impacts of the specific project itself, and/or through a programmatic review. Programmatic reviews look more broadly at the impacts of a general development plan for a region, can apply to numerous proposed projects over long timeframes, and may establish a framework for future project-level environmental documents to be prepared in accordance with the overall programme. 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.

Facilities are also subject to many federal laws that regulate emissions and discharges, such as:

- the Resource Conservation and Recovery Act (RCRA), which regulates the management of solid and hazardous waste;
- the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), which governs the clean-up of contaminated sites;
- the Clean Air Act (CAA), which regulates air emissions from mobile and stationary sources;
- the Clean Water Act (CWA) and Safe Drinking Water Act, which protect surface water and underground sources of drinking water; and
- the Oil Pollution Act (OPA), which addresses clean up and damage assessments relating to oil spills.

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, CWA and RCRA. 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. State regulatory agencies have jurisdiction over 'state waters', which are usually intrastate bodies of water and groundwater.

In the event of a spill or unauthorised discharge, parties can be required to undertake clean-up activities and pay for damages under CERCLA and OPA and may also be assessed for natural resource damages. In particular, 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.

Regulations and permit conditions can place limits on emissions and discharges from facilities and may also include detailed record-keeping and reporting requirements. Each statute and agency has considerable penalty, injunction and criminal law remedies for non-compliance and, in some cases, private parties may also recover damages or enforce public interests through citizen suits.

In addition to pollution control laws and regulations, facilities and exploration activities may also have to comply with ecological laws, such as:

- the Endangered Species Act (ESA), which prohibits or strictly regulates activities that might materially impair the habitats of threatened and endangered species;
- the Migratory Bird Treaty Act (MBTA), which prohibits the taking or injuring of migratory birds; and
- the Marine Mammal Protection Act (MMPA), which prohibits the hunting, harassing, or killing of marine mammals in US waters.

Additionally, oil-related activities must observe several cultural resource laws, which impose mandates on projects that may disturb or uncover property of cultural significance, such as:

- the National Historic Preservation Act (NHPA);
- the American Antiquities Act;
- the Archaeological Resources Protection Act; and
- the Abandoned Shipwreck Act.

For example, the ESA might prevent a new facility from being built 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. The prohibitions in the MBTA have been applied to oil and gas production pits and other facilities, which can present a threat to migratory birds, and offshore seismic exploration activities often require a permit under the MMPA before proceeding. Regulations applicable to underground injection well permits require the issuing agency to consider the NHPA before granting the permit. Several federal agencies have enforcement authority under the various ecological and cultural resources laws, including EPA, the National Oceanic and Atmospheric Administration and the Fish and Wildlife Service, and sanctions for violating the laws can range from administrative civil penalties to criminal liability, including imprisonment.

Health and safety laws and regulations are also key compliance issues for upstream oil activities. 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 . The OCSLA permitting scheme involves extensive health and safety requirements. The BSEE and US Coast Guard regulate and enforce safety rules at offshore facilities such as drilling rigs and oil platforms. Both agencies have authority under the OCSLA and the implementing regulations to require corrective action for deficiencies, to issue civil penalties for non-compliance and to seek criminal sanctions, including imprisonment, for knowing and wilful violations. Onshore, the Occupational Safety and Health Administration (OSHA) and state and local governments all enforce rules protecting employees and contractors from workplace injuries. OSHA has the authority to order corrective actions, issue fines and seek criminal sanctions through judicial proceedings. Record-keeping requirements can be very significant; for example, employee medical records relating to occupational injury must be kept for the duration of the employee's service, plus 30 years.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

Local labour requirement

There is no federal local hiring policy. However, certain cities and counties have local hiring policies for specific industries. For example, San Francisco requires that local residents are utilised in locally sponsored construction projects. On the other hand, some municipalities have prohibited local workforce requirements or goals on public projects.

Foreign workers

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, the Fair Labor Standards Act, the Family and Medical Leave Act and OSHA. State and local laws and agencies supplement the federal workplace rules.

All employers in the United States, including oil companies, must verify the identity and legal authorisation to accept employment of each newly hired employee. The first step required by the Department of Labour is for employers to apply for certification through the Office of

Foreign Labour Certification. If approval is granted, the employees must then apply for a visa under the Immigration Reform and Control Act (IRCA).

Categories of non-immigrant visas, which are temporary in nature for work periods covering a few months to several years, include business visitors, students, trainees and employment-based professional classifications. The adjudication process may require several weeks or months to obtain most employment-based temporary (known as non-immigrant) work authorisations. Many visas will require granting of the visa following an interview at a US consulate abroad.

In some limited 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 to further the goals of the foreign company, such as attending board or high-level strategic planning meetings, pre-sales or post-sales meetings, or participating in internal training.

Anti-discrimination

Many federal, state and local laws prohibit discrimination in employment on the basis of a 'protected classification' such as age, race or colour, sex, religion, national origin, disability (mental or physical, including pregnancy), veteran status, sexual orientation, or genetic information. There may be additional protected categories under state or local law. IRCA makes it illegal to discriminate based on an individual's citizenship or immigration status when hiring, firing and making other employment decisions. IRCA applies equally to US citizens and lawful permanent residents (ie, 'green-card' holders) as well as foreign national personnel. The Department of Justice's (DOJ) Civil Rights Division's Immigrant and Employee Rights Section enforces IRCA's non-discrimination requirements. The Equal Employment Opportunity Commission generally enforces other federal non-discrimination laws, including:

- 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.

Even an ostensibly neutral policy that results in a 'disparate impact' on race, national origin 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'. 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 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, 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.

TAXATION

Tax regimes

37 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 United States.

The principal tax agency at the federal level is the Internal Revenue Service within the Department of the Treasury. Customs duties are administered by US Customs and Border Protection within the Department of Homeland Security. State taxes are administered by a variety of revenue-collecting and regulatory agencies.

COMMODITY PRICE CONTROLS

Crude oil mining

38 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

Competition enforcers

39 What government bodies have the authority to prevent or punish anticompetitive 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 United States): the Federal Trade Commission (FTC) and the Antitrust Division of the DOJ. 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 that are likely to substantially lessen competition, as well as exclusive dealing and tying arrangements that unreasonably restrain trade (also prohibited by the Sherman Act);
- the Energy Independence and Security Act of 2007, which prohibits market manipulation of petroleum; and
- the Robinson-Patman Act, which prohibits 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 has authority to pursue criminal investigations for cartel behaviour. The FTC also enforces the Federal Trade Commission Act, which prohibits 'unfair methods of competition' and similar offences and has the option of challenging anticompetitive 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 Federal Trade Commission 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.

Obtaining clearance

40 What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

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 (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 expiry 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 substantially 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 agencies 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 expiry 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 rare, the agencies have shown an increasing interest in such post-consummation challenges in recent years.

Penalties for a proposed action deemed to violate federal competition laws are up to US$100 million for a corporation and US$1 million for an individual along with prison time. If either the amount gained by the conspirators from the illegal acts or the amount lost by the victims is more than US$100 million, then the fine may be twice the amount. There can also be additional penalties under state law.

DATA

Seismic data

41 Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

Ownership of seismic data generally depends on the agreements between the parties. There is often a seismic use licence agreement. If there is no use agreement, the seismic data may be viewed as a proprietary trade secret.

For seismic surveys conducted in the OCS, a permit must first be obtained from BOEM. The permit allows BOEM to acquire any and all of the data collected.

INTERNATIONAL

Treaties

42 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 1982, 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 International Convention for the Prevention of Pollution from Ships 1973 has resulted in several US statutes pertaining to oil tankers, including OPA, the Port and Tanker Safety Act and the Act to Prevent Pollution from Ships.

The United States is a member of the WTO agreements. These instruments generally prevent 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 NAFTA, which created a zero-duty regime for imports and exports of products among Canada, the United States and Mexico. The United States has free-trade agreements with a number of other countries.

In 2018, President Trump issued a series of Presidential Proclamations entitled Adjusting Imports of Steel into the United States, which override the US tariff commitments under the WTO and free trade agreements. In early 2020, President Trump expanded the tariffs to include aluminum and steel derivatives. The proclamations imposed a 25 per cent tariff on steel articles imported from all countries, except Argentina, Australia, Brazil, and South Korea, and a 50 per cent tariff on steel articles originating from Turkey. Imports from Argentina, Brazil and South Korea are subject to quotas. Oil companies rely on steel for their business, including for drilling and pipelines, and as a result the industry has repeatedly expressed concern about increased costs, global supply chain disruption and new barriers to US energy exports.

Foreign ownership

43 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?

The presence of BP and Shell 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 US 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 United States 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. Such risks are defined to include the effects of the proposed transaction on national requirements for energy sources and physically critical infrastructure 'such as major energy assets'. 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. CFIUS review has become more stringent under the Trump Administration.

There is a procedure under which parties to a transaction involving a foreign acquisition submit information about the transaction to CFIUS. 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.

Cross-border sales

44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

Imports

Imports of crude oil generally are subject to the regulations and standards of the FTC, 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

In 2015, the United States passed legislation repealing a decades-old ban on exports of crude oil produced in the United States. The legislation prohibits imposing or enforcing 'any restriction on the export of crude oil'. However, the President can restrict crude oil exports under certain limited circumstances such as in response to a national emergency, to enforce trade sanctions, or to comply with the US's obligations under international energy programmes.

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Embargoes and sanctions

The United States maintains economic embargoes on certain countries, including Cuba, Iran, North Korea and Syria, pursuant to regulations administered by the Treasury Department's Office of Foreign Assets Control. There are also sanctions that are targeted at discrete parts of an economy, such as Russia's energy sector. 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 (SDN), even when they are not operating from an embargoed country. OFAC recently designated Petróleos de Venezuela (PDVSA) as an SDN. This designation in effect prohibits US persons from engaging in transactions with PDVSA except pursuant to certain general licences. The current general licences allow oil imports and dealings with Citgo and PDVSA for limited times and parties.

UPDATE AND TRENDS

Current trends

45 What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

The history of the US oil industry is punctuated by key events that caused or accelerated the onset of major changes. In the arena of regulation, those events include the 1969 Santa Barbara oil spill that drove enactment of the core federal environmental statutes; the 1973 and 1979 oil supply shocks that drove active intervention in the pricing and distribution of crude and products; and the 1989 grounding of the Exxon Valdez that drove advancements in tanker technology and passage of the Oil Pollution Act of 1990 providing for recovery of economic losses and natural resource damages caused by spills.

To those dates we add 2010 and the explosion and sinking of the Deepwater Horizon mobile offshore drilling unit in the Gulf of Mexico. It has been ten years since that event, marked by significant regulatory changes in its aftermath. This includes an acceleration of the bureaucratic division between commercial and enforcement branches, which was epitomised by the break-up of the Minerals Management Service into three separate bodies with distinct missions – the Office of Natural Resources Revenue, responsible for collecting leasing revenues from mineral development on federal lands; the Bureau of Ocean Energy Management, responsible for energy and mineral development on the Outer Continental Shelf; and the Bureau of Safety and Environmental Enforcement, responsible for environmental and safety compliance by the offshore energy industry.

The pressing question (at the time of writing this chapter) is whether 2020 marks another grave milestone. By February, the novel coronavirus and government responses were already driving down global demand and prices. In March, Russia and Saudi Arabia did not agree to production cuts anticipated in OPEC+ discussions, depressing prices further. Global social distancing and anti-travel regimes have sent energy usage plummeting in transportation, retail and other sectors. Conversely, government relief and oil purchase programmes have buoyed prices – at least temporarily – from their lowest levels.

OPEC+ and producers in Texas and elsewhere may still lower production levels on a sustained basis. If the decrease in global energy demand is arrested, the energy aspects of 2020 may be similar to those experienced in prior recessions. Even so, it is likely that the highest cost production, including oil sands and certain shale formations, may be economically or technically difficult to recover on a permanent basis. Energy sources dependent on subsidies may be challenged, as government policies will certainly be re-prioritised to address social conditions and the sectors most affected by the covid-19 restrictions. 2020 may be a signature year in oil, as well as other industries.

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