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# Brazil Energy Journal

RESEARCH, DEVELOPMENT AND  
INNOVATION IN THE O&G INDUSTRY

# Overview

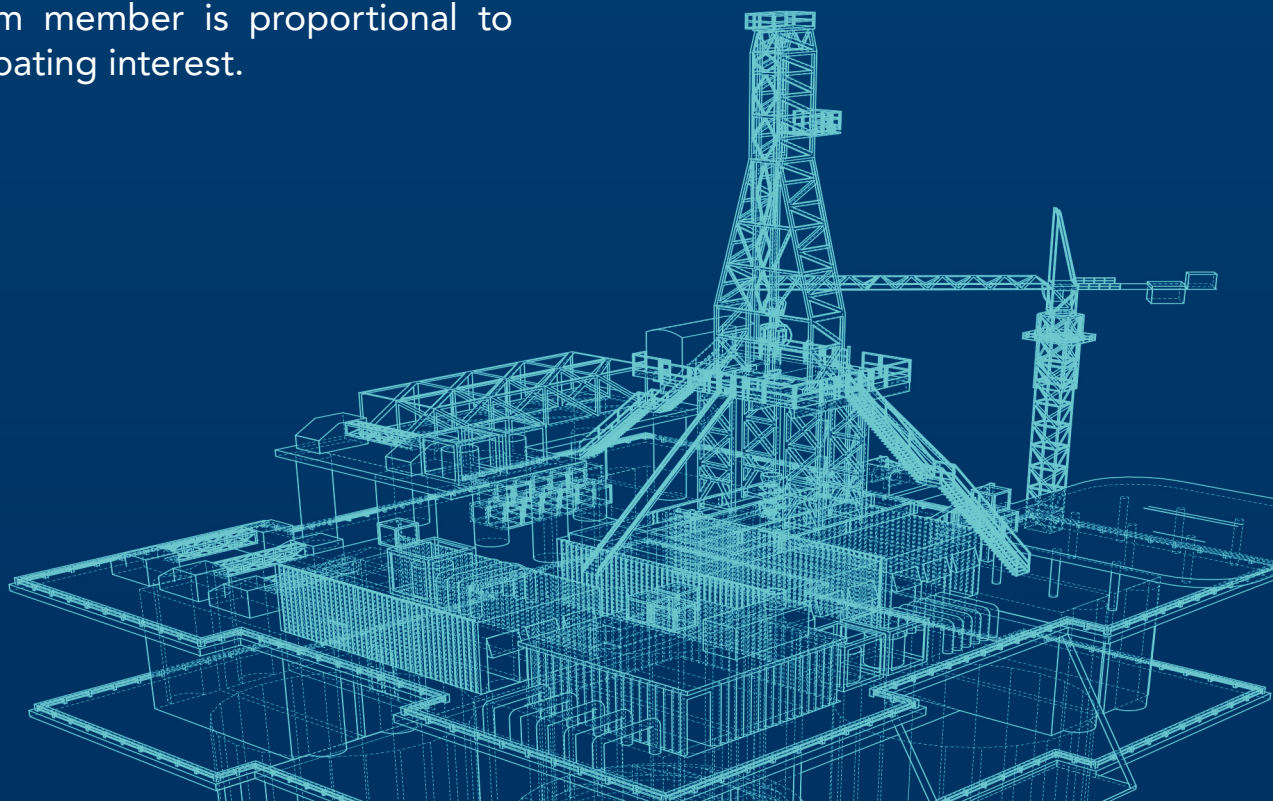
Investment in Research, Development and Innovation (RD&I) projects is key to unlocking technological advancements and developing the national industry. This investment is typically fostered by government authorities around the world in different economic sectors. In Brazil, the promotion of RD&I in the O&G industry was originally a duty of the National Agency of Petroleum, Natural Gas and Biofuels (ANP) under Law No. 9,478/1997 (Petroleum Law).

Since 1988, the ANP has been including in concession contracts (CC), production sharing agreements (PSA), as well as in the transfer of rights agreement (ToR) a contractual obligation that essentially requires the E&P company to allocate a certain amount of funds to RD&I projects in the country pursuant to the provisions of each contract – the RD&I Clause.

By obliging E&P companies to fund RD&I projects, the RD&I Clause aims to promote scientific development in the oil, natural gas, biofuel, renewable energy, energy transition, and decarbonization areas.

Once the investment obligation is triggered, the E&P company is required to allocate funds to RD&I projects implemented by the E&P company itself or an affiliate, by Brazilian companies, or by institutions accredited by ANP (Accredited Institutions).

In case of a consortium, the parties are jointly liable for meeting this investment obligation regardless of any private agreements they have entered into. The investment amount due from each consortium member is proportional to its participating interest.



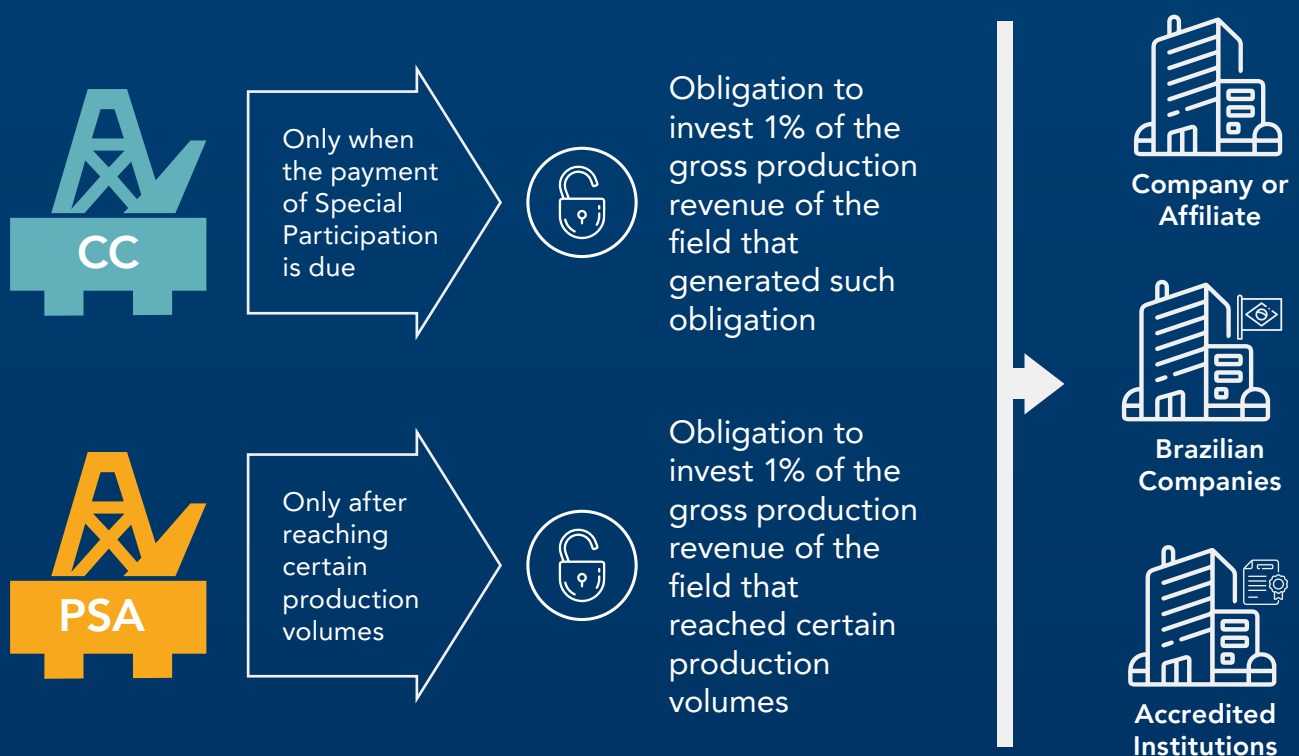
# The RD&I Obligation

The investment obligation under the RD&I Clause has specific but similar triggers in different E&P contracts, as detailed in the following sections. Under the concession contracts, the obligation is only triggered when the payment of Special Participation<sup>1</sup> is due for a certain field in any quarter. Under the production sharing agreements, the obligation is triggered once certain production volumes are reached, according to Decree No. 2,705/1998.

If the obligation is triggered, the concessionaire will be required to invest in RD&I an amount equivalent to:

- Concession contracts: 1% of the gross production revenue of the field that generated the obligation to pay the Special Participation
- Production sharing agreements: 1% of the gross production revenue of the field that reached certain production volumes

The RD&I regulations establish that the RD&I funds must be invested by June 30 of the year that follows the year in which the obligation was triggered.



<sup>1</sup>According to Decree No. 2.705/1998, Special Participation is the extra financial compensation due by E&P concessionaires of oil or natural gas in cases of large-volume production or high profitability of a field.

If the RD&I Obligation is triggered, the concessionaire or contractor is obliged to allocate the aforementioned amounts as shown below:

Concession  
Contracts from Bid  
Round Zero until  
the 10th Bid Round

(i) Minimum of 50% of the RD&I funds must be invested in projects or programs of accredited institutions, as defined in ANP Resolution No. 775/2019 (Accredited Institutions); and

(ii) Remaining RD&I funds must be invested in projects or programs of either (a) the E&P company itself or its affiliates, at their facilities (if located in Brazil) or (b) a Brazilian company (third party).

Concession Contracts  
from the 11th Bid  
Round until the 13th  
Bid Round

+

Production Sharing  
Agreements of the  
first Bid Round

(i) Minimum of 50% of the RD&I funds must be invested in projects or programs of Accredited Institutions;

(ii) Minimum of 10% of the RD&I funds must be applied to projects or programs of Brazilian companies; and

(iii) Remaining RD&I funds resources may be invested in projects or programs of either (a) the E&P company itself or its affiliates, at their facilities (if located in Brazil), (b) a Brazilian company or (c) an Accredited Institution.

Concession  
Contracts from the  
14th Bid Round

+

Production Sharing  
Agreements from  
the second Bid  
Round

(i) 30% to 40% of the RD&I funds must be invested in universities or national research and development institutes accredited by the ANP;

(ii) 30% to 40% of the RD&I funds must be invested in research, development and innovation activities that aim to create, with Brazilian companies, technologically innovative products or processes; and

(iii) The remaining RD&I funds may be invested in research, development and innovation activities carried out (a) in the concessionaire/contractor's own facilities (located in Brazil); (b) in affiliates' facilities (located in Brazil); (c) in Brazilian companies; or (d) in universities or national research and development institutes accredited by the ANP.

# RD&I Implementation and Inspection

The ANP is responsible for the analysis, approval, monitoring, and inspection of the application of the funds from the RD&I Clause. In addition to allocating the investments, the E&P companies are also required to submit specific forms to the ANP for monitoring the compliance with the RD&I obligations.

These forms include (i) the Work Plan (PTR), which must be submitted within 90 days after the beginning or contracting of the RD&I Project; (ii) the Physical and Financial Implementation Report; and (iii) the Technical Report (REF-RTC) – both of which must be submitted within 120 days after the conclusion or closure of the RD&I Project.

In addition, a Consolidated Annual Report (RCA) must be submitted by September 30 of the year immediately following the year in which the investment obligation was triggered.

Certain RD&I projects are also subject to the prior analysis and approval by the ANP.

## Accredited Institutions

The ANP is also responsible for the accreditation of RD&I Institutions, certifying that an institution has the appropriate infrastructure and technical and operational conditions to carry out RD&I activities and/or educational activities in areas relevant to the O&G industry.

The institution must meet certain requirements, such as being incorporated and headquartered in Brazil.

## PRH-ANP

Another possible investment alternative is the ANP's Human Resources Training Program for the oil industry (PRH-ANP). This program aims to encourage the training of skilled labor in strategic areas for the development of the sector by financing graduate, post-graduate, and post-doctorate scholarships.

PRH-ANP is managed by the Funding Authority for Studies and Projects (Finep), which is a state-owned company under the Ministry of Science, Technology and Innovation.

## Penalties

Failure to comply with the obligation under the RD&I Clause (e.g. failure to allocate resources or submit the forms) may result in the application of penalties.

# Legal Framework

Decree **No. 2,705/1998**: Defines the criteria for calculation and collection of the governmental participation applicable to the activities of exploration, development and production of oil and natural gas.

Law **No. 9,847/1999**: Governs for the inspection of activities related to the national fuel supply, establishes administrative penalties.

Decree **No. 2,953/1999**: Governs for the administrative procedure for the application of penalties for infractions committed in activities related to the oil industry and the national fuel supply.

ANP Resolution **No. 50/2015**: Approves ANP Technical Regulation No. 03/2015 and provides for sanctions in cases of breach of its provisions.

Technical Regulation **No. 03/2015**: Establishes the definitions, guidelines, and rules for the allocation of funds in RD&I projects and related procedures.

ANP Resolution **No. 799/2019**: Amends Technical Regulation No. 03/2015 to improve the wording of some provisions and include new definitions, among other provisions.

ANP Resolution **No. 865/2022**: Postpones the deadlines for the investment of RD&I funds and submission of required documents pursuant to ANP Resolution No. 50/2015, due to COVID-19.

ANP Resolution **No. 866/2022**: Amends Technical Regulation No. 03/2015 to clarify the eligibility of RD&I projects or programs related to renewable energy and energy transition among other provisions.

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