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Conducting oil and gas activities in Morocco

Laws and regulations

List the main legislation governing petroleum exploration and production activity in your country.

- Law No. 21-90 relating to the exploration and exploitation of hydrocarbons deposits, enacted by Dahir No. 1-91-118 dated 1 April 1992, as amended by law no. 27-99 enacted by Dahir No. 1-99-340 dated 15 February 2000 (Law No. 21-90 (the '**Hydrocarbon Code**')); and
- Decree No. 2-93-786 dated 3 November 1993 implementing the Hydrocarbon Code, as amended by Decree No. 2-99-210 dated 16 March 2000.

In addition to the Hydrocarbon Code, the laws and regulations applicable to downstream oil and gas activities are:

- Law No. 1-72-255 relating to the import, export, refining, collection, storage and distribution of hydrocarbons, enacted by the Dahir dated 22 February 1973, as amended by Law No. 4-95 enacted by Dahir No. 1-95-141 dated 4 August 1995 ('**Law No. 1-72-255**'); and
- Decree No. 2-72-513 dated 7 April 1974 implementing Law No. 1-72-255.

Identify the Government, regulatory and/or oversight bodies principally responsible for regulating oil and gas activities.

The Moroccan Ministry of Energy and Mines (the '**MMEM**') and the Moroccan Minister of Finance (the '**MMF**') are the public authorities in charge of the Moroccan hydrocarbon activities. In addition to these government authorities, the *Office National des Hydrocarbures et des Mines* ('**ONHYM**')

was created by Law No. 33-01 enacted by Dahir No. 1-03-203 dated 11 November 2003. This public office conducts reconnaissance, exploration and exploitation of hydrocarbon deposits, as well as deposits of any other mineral substance (excluding phosphates). The ONHYM is under the control of the MMEM and the performance of its commercial activities is subject to the control of the MMF.

Pursuant to article 71 of the Hydrocarbon Code, the Moroccan State has delegated to the ONHYM, in particular, the following activities:

- Conclusion of petroleum agreements with oil companies;
- Holding of participation interests in exploration permits or exploitation concessions reserved for the Moroccan State; and
- Exercising of pre-emptive rights on behalf of the Moroccan State.

Entry requirements

What are the registration requirements for becoming a licensee of an oil and gas production sharing contract/licence/concession ('Licence') in your country? For instance, is it necessary to incorporate a subsidiary, or register a branch?

Pursuant to the Hydrocarbon Code, any legal entity may conduct exploration and production activities in Morocco; there is no distinction made between Moroccan and foreign entities. Any operator applying for an exploration permit must give evidence of its technical and financial capacity to complete the exploration works and undertake to fulfil a minimum program of works accompanied by a financial undertaking.

There is no specific requirement under the Hydrocarbon Code to register a branch or a company in Morocco in order to carry out oil and gas activities. However, depending on the possible local partners or investors in the operator, co-venturers may need to register their future registered office location with the trade register.

We are not aware of any particular requirements regarding the legal form of an oil company. Several types of entities are available under Moroccan company legislation including corporations with limited liability.

Are there any foreign investment approval requirements or restrictions when commencing business in your country (e.g. a minimum local shareholding in the entity undertaking the activity)?

Moroccan legislation and regulations apply equally to both Moroccan nationals and foreign investors. It should, however, be remembered that the Moroccan state, through the ONHYM, shall have a maximum 25% interest in any exploration permit or exploitation concession, with the actual level to be held by ONHYM negotiated at the time of entering into the petroleum agreement.

Licensing

Identify the main fiscal/legal model granting rights to explore and produce oil and gas.

Legal

The MMEM is in charge of reviewing oil operators' applications for reconnaissance licenses, exploration permits and exploitation concessions.

Reconnaissance licence

Reconnaissance licences are granted further to the conclusion of a reconnaissance agreement with the ONHYM and upon the filing of a request by a decision of the MMEM, specifying the terms and conditions of the licence (validity period, validity area, etc.).

Once the reconnaissance works are completed, the parties to the reconnaissance agreement (or third parties) may decide to begin exploration works. In that respect, the ONHYM and the oil operator shall enter through bilateral negotiations into a petroleum agreement setting the respective rights and obligations between them for exploration and, as the case may be, exploitation.

Exploration permit

Following the negotiation and finalisation of the draft petroleum agreement, the document is sent to the MMEM for an agreement in principle. Once this agreement is executed between the parties, a request for an exploration permit may be filed.

The MMEM is in charge of granting exploration permits through a ministerial order and within 60 days of the date of filing of the request. It is granted following the approval of the corresponding petroleum agreement by joint ministerial order of the MMEM and the MMF. Exploration permits may only be granted to one legal entity or several legal entities on a joint ownership basis. In addition to the petroleum agreement, the ONHYM and its partners shall enter into an association agreement setting up the relations between the parties.

Exploitation concession

Following the exploration works, should an exploration permit holder discover an oil deposit that may be commercially exploited, it is entitled to request an exploitation concession relating to this deposit, provided that it has fulfilled its legal and contractual obligations.

The request for an exploitation concession shall be submitted to the MMEM no later than 3 months before the end of the term of the validity period of the corresponding exploration permit. This concession is awarded by decree following a request from the MMEM.

Fiscal

Oil exploration, production, transportation, and marketing and distribution activities are taxed under the common Moroccan tax rules, but are subject to a certain number of tax advantages granted to oil and gas operators in order to promote their activities in Morocco.

Below are listed some of the tax incentives provided under the Hydrocarbon Code:

- The holder, or as the case may be, the co-holders of any exploitation concession benefit from a total exemption on corporate income tax during a 10 year period starting as from the date of the beginning of the regular production under any exploitation concession;
- All equipment, products and services necessary for the reconnaissance, exploration and exploitation works are exempted from value added tax ('VAT') and customs duties; and
- Profits and dividends of the exploitation concessions holders (and those of the shareholders of the concession companies) are exempted from any taxes and may freely be repatriated outside Morocco without limitations for foreign entities.

Please outline the procedure to apply to the Government for an interest in a Licence in your country. Please include details of cost and timing for obtaining such interest.

Please refer to the section above entitled 'Legal' for details on the procedure.

What is the customary duration of the relevant Licence?

With regard to oil upstream activities, reconnaissance licences may be granted for a maximum initial period of 1 year which can then be extended for additional periods of a maximum duration of 1 year each, and for either part or the whole of the licence area, provided that undertakings concerning the first period have been fulfilled.

Exploration permits may be granted for a maximum 8 year period. However, when a discovery of hydrocarbons occurs during the last year of validity of the permit, its duration may be extended for an exceptional period of a maximum of 2 years to allow for the assessment of such discovery.

The maximum validity period for an exploitation concession amounts to 25 years. However, a sole exceptional extension that cannot exceed 10 years may be granted, if the rationale and economic exploitation of the deposit justifies it.

Does the Government have any right to participate and be carried in the Licence? If so, please describe the extent of this entitlement.

Is there any mechanism for recovery of carry costs?

In order to carry out oil exploration and exploitation activities in Morocco, any operator must enter into a petroleum agreement with the ONHYM, and provide the ONHYM with no more than a 25% interest in the exploration permit and, as the case may be, the exploitation concession.

The ONHYM benefits from a specific legal regime that entitles it to hold titles and permits without being bound by the legislative and regulatory constraints on the number and nature of these titles and permits and the maximum surface area of exploration permits. The ONHYM can either act independently, or conclude partnerships with private entities, whether Moroccan or not.

Does the Government have any right to participate in the operatorship of the Licence?

The ONHYM may also participate in the operatorship of oil titles since it may, in compliance with Law No.33-01, in any authorised area, develop oil exploration and perform oil exploitation activities relating to hydrocarbons deposits.

Assignment

What Government and/or regulatory approvals are required for the acquisition of oil and gas interests held under a Licence (whether by asset or corporate sale/change of control)?

If any, what are the timing requirements and costs of obtaining such Government and/or regulatory approvals?

In accordance with article 8 of the Hydrocarbon Code, the total or partial transfer of any interest in an exploration permit or exploitation concession is subject to prior Government consent (in the form of a ministerial order of

the MMEM in the case of exploration permits and a decree upon proposal of the MMEM in the case of exploitation concessions). Contrary to other oil titles, reconnaissance licenses are not transferable.

The Hydrocarbon Code does not provide any specific timetable for this process. Our experience is that the timescale for assignment of an interest in a permit is more or less the same as for the grant of a permit under article 7 of Decree No. 2-93-786, being 60 days from the date the application is filed.

The Hydrocarbon Code does not contain any provision relating to the change of control of a company holding oil and gas assets. Nevertheless, such a change of control of the operator may, in certain situations, have to be notified to the ONHYM.

No specific fees are applicable in the case of a transfer or change of control. However, it should be noted that if the exploration permit or exploitation concession is sold, the price paid to the seller may be taxable for corporate income tax purposes.

Are there any pre-emptive rights reserved to any Government entities in the event of a proposed assignment of an interest held under a Licence? If so, what are the terms upon which such entities are allowed to acquire the interest?

The Moroccan state is entitled to exercise a pre-emptive right where the transfer of the exploitation concession is made to a third party other than the parent company or an affiliate of the transferor. The pre-emptive right is valid for a period of 120 days from the date of notification by the concessionaire of its intention to enter into a deed of transfer.

Economic support

Are parental guarantees or other economic supports commonly required to be provided by oil and gas companies?

It is often provided in reconnaissance agreements that the operator must issue or procure the issuance of an irrevocable bank guarantee in favour of the ONHYM for the amount specified in the agreement. An operator failing to comply with its minimum work programme obligations will be subject to the payment of a penalty to the ONHYM up to the amount of the bank guarantee.

Are security deposits required in respect of work commitments or otherwise?

In order to obtain an exploration permit, the operator and the ONHYM enter into a petroleum agreement and an association agreement. In accordance with article 22 of the Hydrocarbon Law, the holder of an exploration permit may have an obligation to provide a security deposit in order to guarantee its contractual obligations. The guarantee usually requested by the ONHYM is a performance bond from a bank for the minimum work programme.

Abandonment and Decommissioning

What abandonment regime is in place?

Are security deposits required in respect of future decommissioning liabilities?

According to article 6 of the Hydrocarbon Law, the concession and its outbuildings (field, buildings, machinery, etc.) freely return to the Moroccan state upon the ending of its term, free of any charges. The holder of the concession title shall, in that respect, return the outbuildings relating to the concession to a state allowing the pursuance of the normal exploitation of the reservoir. Should the carrying out of the exploitation no longer be justified, the holder of the concession title has the obligation to clean the site in accordance with good oil sector practice.

Any holder of an exploration permit or an exploitation concession having performed its obligations within the allotted time is entitled to abandon its title, either in whole or in part. When the permit or the concession is held jointly, the abandonment of one co-venturer does not prevent the other holders from taking on the obligations of the leaving co-venturer. Should one concession co-venturer decide to withdraw either partially or totally, the Moroccan state may exercise a priority right over all or part of the relinquished concession.

We are not aware of any security deposits specifically aimed at future decommissioning liabilities.

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