

GETTING THE DEAL THROUGH

Oil Regulation

in 33 jurisdictions worldwide

2014

Contributing editor: Bob Palmer



Published by
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Getting the Deal Through is delighted to publish the fully revised and updated eleventh edition of *Oil Regulation*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 33 jurisdictions featured. New jurisdictions this year include Croatia, Ecuador, Egypt, India, Indonesia and Morocco.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

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

Getting the Deal Through

London
June 2014

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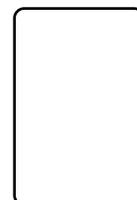


Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

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First published 2003
Eleventh edition
ISSN 1742-4100

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



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Morocco

Marc Veillot*

CMS Bureau Francis Lefebvre

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

The Moroccan hydrocarbon legislation distinguishes oil and gas upstream activities including reconnaissance, exploration and exploitation activities, either conducted onshore or offshore, and downstream activities relating to import, export, refining, collection, storage and distribution.

Over the period 2000-2011, a total of 50 wells were drilled in Morocco by the National Office of Hydrocarbons and Mines (ONHYM) and its partners, 42 onshore and eight offshore. However, to date, Morocco still remains underexplored in terms of oil exploration and the present trend is to develop the attractiveness of its hydrocarbon opportunities, relating to either conventional or unconventional reserves.

The oil and gas industry is represented by approximately 34 local and international oil companies, partners of the ONHYM, including major companies such as BP, Chevron and Total, super-independent companies such as Repsol and Kosmos and independent companies such as Cabre, Circle Oil, Chariot, Samir, Longreach, Gas Natural or IGIF. To date, the Moroccan oil activities remain at the exploration stage and no exploitation concession has yet been granted to an operator (as opposed to gas activities).

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

According to 2012 energy-related figures obtained from the Moroccan Ministry of Energy and Mines (MEM), 60.7 per cent of the Moroccan energy consumption was provided by oil and petroleum products where coal represented 22 per cent, exchange of electricity 7.2 per cent, natural gas 6.7 per cent, hydropower 2.3 per cent and wind energy 1.1 per cent. It is also to be noted that Morocco imports 95 per cent of its energy needs.

The steady need for petroleum products considerably increases the national energy bill. The energy bill is affected, in particular, by the imports of crude oil, petroleum products, electricity and other hydrocarbons and energy products. It should also be noted that Morocco is developing the capacity of its renewable energies as illustrated by its solar energy and wind energy plans that intend to reach a production of 4,000MW in 2020.

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

Given the high energy demand and the need for energy security, Morocco is increasingly developing and improving its energy policy and, in particular, its oil and gas policy, in order to foster the

research, exploration and exploitation of its existing and potential natural resources existing in its soil and subsoil and in the Moroccan water territory.

The diversification of resources and, in particular, the development of renewable energies such as solar and wind energies, is also considered as fundamental and growing policies are implemented in this field.

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

Exploration permits and exploitation concessions, granted by the Moroccan administration, are officially published in the Official Gazette and may be consulted by any person.

It is possible to request information from the MEM or the ONHYM in connection with the granting of reconnaissance licences, which, unlike other oil titles, are not officially published.

5 Describe the general legal system in your country.

The legal system of Morocco, which is based on civil law, is stable and covers most of the areas of law. The new 2011 Moroccan Constitution reinforced principles of transparency, independence of the judiciary system, protection of rights and respect of the law and economic freedom. It should be noted that operators may have recourse to arbitration in Morocco.

In recent years, the Moroccan legal system has been reformed and modernised in order to fight against corruption in most areas concerning Moroccan public services and public bodies. Morocco, in particular, ratified in 2007 the United Nations Convention against Corruption signed on 31 October 2003.

Regulation overview

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

The laws and regulations directly applicable to the reconnaissance, exploration and exploitation of oil and gas resources in Morocco, onshore or offshore, are the following:

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

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

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

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

There are no specific provisions in the Hydrocarbon Code that allow for expropriation of a licensee's interest.

More generally, pursuant to Law No. 7-81 relating to the expropriation for public utility and temporary occupation, enacted by Dahir No. 1-81-254 dated 6 May 1982, a right of expropriation is opened to the Moroccan authorities, as well as to other legal public and private entities or to natural persons to whom the Moroccan state delegated such a right in order to perform works and operations of public utility.

According to Law No. 7-81, expropriation may only legally take place following specific formalities and conditions including, in particular, an administrative act declaring of public utility the area subject to a potential expropriation and the filing of a request for expropriation and possession before the administrative court that will rule on the expropriation and removal of the expropriated entity or person and the amount of compensation to be paid.

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

The MEMM and the Moroccan Minister of Finance (MMF) are the public authorities in charge of the Moroccan hydrocarbon activities.

In addition to these government authorities, the ONHYM has been created by Law No. 33-01 enacted by Dahir No. 1-03-203 dated 11 November 2003. This public office conducts reconnaissance, exploration and exploitation of hydrocarbon deposits, as well as mineral deposits and any mineral substance (excluding phosphates). It is placed under the control of the MEMM and the performance of its commercial activities is subject to the control of the MMF.

Pursuant to article 71 of Law No. 21-90, the Moroccan state has delegated to the ONHYM, in particular, the following activities:

- conclusion of petroleum agreements with oil companies;
- holding of participation interests in exploration permits or exploitation concessions reserved for the Moroccan state (ie, no more than 25 per cent); and
- exercising of pre-emptive rights (ie, in the event of a total or partial transfer of interests in favour of a third party other than the parent company or an affiliate of the transferor, the Moroccan state may exercise a right of pre-emption).

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

Statistics relating to oil production, export and import are prepared and made available by several public authorities such as the Department of Statistics of the High Commissioner for Plan, which is the Moroccan public body in charge of the production, the analysis and the publication of official statistics in Morocco and the MEMM, through its website. The ONHYM may also keep and update databases relating to the exploration and exploitation of hydrocarbons.

Natural resources

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

According to article 1 of the Hydrocarbon Law, oil reservoirs constitute part of the public property of the state.

In order to carry out any hydrocarbons reconnaissance, exploration or exploitation activities in Morocco, any operator must, therefore, obtain from the Moroccan authorities either a reconnaissance licence, an exploration permit or an exploitation concession. Exploration permits and exploitation concessions are titles of a limited duration that do not give their holder any proprietary right over either the soil itself or the sub-soil.

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

Oil operators are entitled to carry out both onshore and offshore activities in Morocco. The areas that may be subject to an oil exploration and production are determined at the time of the granting of the corresponding permits or concessions.

Moroccan authorities may determine areas where such oil activities can be restricted for environmental, military, agricultural or other reasons of general interest.

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

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

Reconnaissance licences are granted further to the conclusion of a reconnaissance agreement with the ONHYM and upon the filing of a request by a decision of the MEMM, 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.

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

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

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

The request for an exploitation concession shall be submitted to the MEMM no later than three months before the term of the validity period of the corresponding exploration permit. This concession is awarded by decree upon proposal of the MEMM.

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

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

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

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

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

The Hydrocarbon Code provides for the fees and royalties that should be paid by operators to the Moroccan state.

In that respect:

- any legal entity (other than a public body) has to pay an administration fee amounting to 1,000 dirhams for each request for an exploration permit and its extension;
- any holder of an exploitation concession has to pay, in accordance with its interest share should there be more than one holder, an annual surface rental fee amounting to 1,000 dirhams per km² exploited; and
- any holder or co-holder of an exploitation concession has to pay an annual concession fee relating to its interest in the production of hydrocarbons issued from the concession, payable in compliance with the terms and conditions of the petroleum agreements.

The rates corresponding to this concession fee are the following:

- onshore and offshore with a water depth inferior to 200 metres: oil – 10 per cent, gas – 5 per cent, with an exemption for the first 300,000 tons of oil and 300 million m³ of gas produced in the concession; and
- onshore and offshore with a water depth superior to 200 metres: oil – 7 per cent, gas – 3.5 per cent, with an exemption for the first 500,000 tons of oil and 500 million m³ of gas produced in the concession.

The Hydrocarbon Code and the General Tax Code do not provide any tax stabilisation measures. However, the Hydrocarbon Code provides tax incentives applicable to the holder of exploration permits or exploitation concessions (see question 34).

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

With regard to oil upstream activities, reconnaissance licences may be granted for a maximum initial period of one year and extended for one or several periods of a maximum duration of one year each, either for part of or for the same area, provided that undertakings concerning the first period have been fulfilled.

Exploration permits may be granted for a maximum eight-year period. However, when a discovery of hydrocarbons occurs during

the last year of validity of the permit, its duration may be extended for an exceptional period of maximum two years for the assessment of such discovery.

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

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

The provisions of the Hydrocarbon Law apply to the maritime area comprising the seabed and sub-soil of the adjacent regions of the Moroccan coastline up to a water-depth that still allows the exploitation of hydrocarbons deposits, without prejudice to, in particular, international conventions ratified by the Moroccan state.

Any duly authorised oil company is entitled to conduct offshore activities in the territorial waters, the continental shelf and the exclusive economic zone of Morocco with perimeter zones delimited, in particular, pursuant to Moroccan maritime law.

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

There is no fundamental difference between the onshore and the offshore regimes. Notwithstanding the preceding, in particular, maximum surface areas that may be subject to an exploration permit by one legal entity differ between onshore and offshore regimes.

The rules that are contained in the Hydrocarbon Code apply both for crude oil and natural gas with only slight differences (eg, rates of the concession fee, see question 14). However, the exploration and production of oil shale is not governed by the Hydrocarbon Code but by the Mining Code (Decree of 16 April 1951). At present, the regulation of shale gas is under discussion between the Moroccan government and, in particular, the ONHYM.

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

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

There are no specific requirements under the Hydrocarbon Code to register a branch or a company in Morocco in order to carry out oil and gas activities. However, depending on the contemplated local partners and investments made by the foreign operators, such operators doing business in Morocco will need to register with the trade register of their future registered office location.

We have no knowledge of particular requirements pertaining to the legal form of the oil company to be set up. As such, several types of entities are available under Moroccan company legislation, including corporations with limited liability.

19 What is the legal regime for joint ventures?

Considering that the Moroccan state, through the ONHYM, shall benefit from no more than a 25 per cent interest through petroleum agreements, oil operators will set up joint ventures in order to carry their activities in Morocco.

The Hydrocarbon Code does not provide a specific legal regime for joint ventures nor does it impose any form of joint venture between the operator and the ONHYM. As a consequence,

operators may freely set up a company in the forms that are provided by the several laws relating to companies.

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

In accordance with article 30 of Law No. 21-90, when a reservoir extends beyond the limits of one or several adjoining exploration permits, its development and exploitation must be performed, as the case may be, through a so-called unitisation agreement between the holders of such licences, according to terms and conditions that shall be approved by the administration.

If such an agreement cannot be entered into between the holders of the adjoining exploration permits, the dispute will be resolved by technical rules laid down by the administration, taking into account, in particular, the extent of the deposit and its conservation.

In the event that there are no adjoining permits, the holder of the exploration permit where the initial discovery was made may, in the context of a new petroleum agreement, extend its application for an exploitation concession to cover all of the area of the deposit.

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

Provisions pertaining to parties' liabilities may be specified at the time of the conclusion of the petroleum and association agreements between the ONHYM and its partners.

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

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

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

Local content requirements

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

There are no specific obligations upon operators to prefer, or use a minimum amount, of locally sourced goods or services. However, these elements will form part of the negotiations with the ONHYM at the time of the entering into the petroleum agreement.

It should be noted that, according to article 50 of the Hydrocarbon Law, holders of oil titles and their contractors and sub-contractors benefit from an exemption from all duties and taxes on the importation of equipment, materials and consumable products intended for use in the reconnaissance, the exploration and the exploitation of hydrocarbons and in activities ancillary thereto. However, the above exemption will not be granted if such equipment, materials and consumable products can be supplied by the local market at a price within a maximum excess of 10 per cent of the CIF price and on equivalent conditions of quality and terms of delivery.

Transfers to third parties

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

In accordance with article 8 of Law No. 21-90, the total or partial transfer of any interest in an exploration permit or exploitation concession is subject to the prior governmental consent (ie, by a ministerial order of the MEM in the case of exploration permits and a decree upon proposal of the MEM in the case of exploitation concessions). Contrary to the other oil titles, reconnaissance licences are non-transferable.

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

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

The Hydrocarbon Code does not contain any provisions relating to the change of control of a company holding oil and gas assets. There should be no requirement to obtain the prior approval of the Moroccan authorities. Nevertheless, such a change of control of the operator may have to be notified to the ONHYM.

25 Is government consent required for a change of operator?

Yes (see question 24).

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

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

Decommissioning

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

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

In addition, any holder of an exploration permit or an exploitation concession having performed its obligations within the allotted time is entitled to abandon its title, either in whole or in part. When the permit or the concession is held jointly, the abandonment of one co-holder does not avoid the said titles if the other holders take responsibility of the undertakings of the leaving co-holder. Should one concession co-holder decide to withdraw either partially or totally, the Moroccan state may exercise a priority right over all or part of the relinquished concession.

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

We have no knowledge of security deposits specifically aimed at future decommissioning liabilities. However, see question 22 for further details on that matter.

Transportation

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

It should be noted that transportation of hydrocarbons is considered as an ancillary activity by the Hydrocarbon Code and that oil operators must abide by the rules set forth therein.

Attention should be drawn to, in particular, the Dahir dated 30 December 1927 relating to the transportation of hydrocarbons and liquid fuels, as well as Law No. 30-05 relating to the transportation by road of dangerous goods, specifying obligations to be respected by operators, but this should only enter into force at the time of the publication of its implementing decrees. The adoption of such regulations is awaited with great interest since their intent is to clarify the system of authorisations, in particular, in the Moroccan transport sector.

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

See question 29.

Health, safety and environment

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

Under article 38 of Law No. 21-90, legislation and regulations in force relating to security and public health, the environment, security and hygiene of personnel, accommodation, the most effective use and conservation of deposits, the protection of springs, public highways and buildings and, as regards maritime exploration, the protection of marine life, of the environment and the safeguard of navigation 'may in no way be waived at the time of delivery of a reconnaissance licence, an exploration permit or an exploitation concession'.

In that respect, petroleum agreements must include, in particular, provisions relating to the respect of the environment. In addition, the holder of an exploration permit or an exploitation concession must take out insurance against any damage caused to the environment.

Without prejudice to the application of any other relevant sanctions and penalties applicable under Moroccan law, exploration permits and exploitation concessions may be forfeited by the administration should their holders fail to comply with any of their undertakings given at the time of the granting of their oil title.

It should be noted that there are several specific laws relating to water, air, waste management and more generally the environment including:

- Law No. 10-95 relating to water;
- Law No. 11-03 and Law No. 12-03 on the environment and the Environment Impact Assessment Study (EIAS) providing for general obligations on projects that may have an impact on the environment;
- Law No. 13-03 relating to air pollution; and
- Law No. 28-00 related to waste management and removal.

It should be noted that specific administrative authorisations may also have to be obtained pursuant to the Dahir dated 25 August 1914 governing insanitary, inconvenient or dangerous establishments.

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

Oil products composition is defined precisely in ministerial orders, such as the Ministerial Order No. 1546-07 of the Minister of Energy and Mines relating to the characteristics of petroleum products. In the case of fraud, products can be seized by customs.

Labour

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

There is no specific labour regulation in connection with the oil and gas industry in the Moroccan Labour Code. In order to recruit foreign employees, any employer must, according to article 516 of the Labour Code, obtain an authorisation from the Employment Ministry. A fine of between 2,000 and 5,000 Moroccan dirhams will be imposed on the employer should he or she fail to comply with such a requirement.

There is no minimum requirement relating to a minimum amount of local labour that must be employed. However, the actual policy of the authorities is to favour local employees.

There is no training fund for the local workforce, but according to article 37 of the Hydrocarbon Law, the holder of an oil title must contribute to the training of executives and technicians in the oil industry by including them in the works performed and providing them with specific training. However, in practice, it should be noted that the ONHYM may provide personnel and assist with the hiring process. Petroleum agreements usually require that the operator hires Moroccan nationals to the greatest extent possible and provide the ONHYM employees with specific training.

The Labour Code in article 9 provides for a general requirement relating to anti-discrimination by prohibiting any form of discrimination related to the colour, race, sex, disability, marital status, religion, political opinion, etc, against employees. Non-compliance with such provisions is liable to a fine of between 15,000 and 30,000 Moroccan dirhams.

Taxation

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

These activities are taxed under the common Moroccan tax rules, subject to a certain number of tax advantages granted by the Moroccan state to oil and gas operators in order to promote their activities in Morocco.

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

- the holder, or as the case may be, the co-holders of any exploitation concession benefit from a total exemption on corporate income tax during a 10-year period starting as from the date of the beginning of the regular production of any exploitation concession;

- all equipment, products and services necessary for the reconnaissance, exploration and exploitation works are exempted from value added tax (VAT) and customs rights; and
- the profits and dividends of the exploitation concessions holders (and those of the shareholders of the concession companies) are exempted from any taxes and may freely be repatriated outside Morocco without limitations for foreign entities.

The holder of an exploration permit or an exploitation concession benefits from an exemption on Business Licence Tax.

Commodity price controls

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

There is no mandatory price-setting regime in Morocco for crude oil. Law No. 06-99 relating to free competition and pricing, however, provides rules on pricing in order to maintain free competition in the Moroccan market. Reference to price-fixing of crude oil is made in petroleum agreements in accordance with principles set forth in the Hydrocarbon Code.

It should be noted that pursuant to Moroccan competition and price-fixing laws and regulations, liquid and gas fuel prices are regulated. The Moroccan government has recently set up a price-indexing system for certain liquid fuels, with prices fixed twice a month.

Competition, trade and merger control

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

There are no specific regulations regarding competition laws applicable to oil and gas operations. Law No. 06-99 relating to free competition and pricing applies to foreign companies operating in Morocco in production, distribution and services, in addition to companies with operations in Morocco that have an impact on competition in the Moroccan market. Any company intending to perform industrial activities in Morocco must comply with this law.

The Competition Council, created by Law No. 06-99, is only a consultative body than can be asked for advice by the government, judicial jurisdictions and other agreed organisations or bodies under Law No. 06-99. Jurisdictions are the only authorities allowed to punish anti-competitive practices, subject to certain exceptions where, for instance, preventive sanctions can be imposed by the Moroccan administration.

Update and trends

For the past 15 years, Morocco has been intending to foster oil exploration and exploitation on its territory. We understand that there is a present trend to adapt the hydrocarbon legislation and regulations to better attract foreign investors as Morocco is more and more willing to explore and exploit its soil and subsoil in order to reduce its energy dependency. The Moroccan government is, for instance, preparing a specific legislation relating to unconventional hydrocarbons reserves.

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

There is no procedure for obtaining an administrative decision confirming that oil and gas projects are in compliance with competition law.

International

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

Morocco is a party to several free-trade agreements (FTAs) concluded, in particular, with Turkey, the United States and several Arab countries. It is also a party to an Association Agreement with the European Union, which came into effect in 2000. Morocco is now negotiating an FTA with the European Union. Morocco has also concluded several double tax treaties and agreements relating to the promotion and mutual protection of investments with several countries such as France or the United States.

It should be noted that Morocco is not a member of several international organisations related to oil activities, such as the Organization of the Petroleum Exporting Countries, the Organization of Arab Petroleum Exporting Countries or the African Petroleum Producer's Association.

Industrial development strategies, infrastructure improvements and the creation of a financial centre, highlighted, in particular, by a new port, a free trade zone near Tangier and the creation of Casablanca Finance City, are improving Morocco's competitiveness.

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

Moroccan legislation and regulations apply equivalently to both Moroccan nationals and foreign investors (see question 18).

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It should, however, be remembered that the Moroccan state, through the ONHYM, shall have a no more than 25 per cent interest in any exploration permit or exploitation concession, this being negotiated at the time of the entering into the petroleum agreement.

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

Pursuant to article 41 of the Hydrocarbon Law, any holder of an exploitation concession, before contemplating to export its share of production, must first contribute to the needs of the local market according to the conditions defined in the petroleum agreement.

* *The author would like to thank Bertrand Saint-Pierre for his participation in preparing this chapter.*

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