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Conducting oil and gas activities in Ghana

Laws and regulations

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

Petroleum exploration and production activities are regulated by a number of laws in Ghana:

- The Petroleum Commission Act, 2011 (Act 821) ("**Petroleum Commission Act**");
- The Ghana National Petroleum Corporation Law, 1983 (PNDCL 64) ("**GNPC law**");
- Petroleum (Exploration and Production) Act, 2016 (Act 919) ("**Petroleum Exploration Law**");
- Petroleum Commission (Fees and Charges) Regulations, 2015 (L.I. 2221) ("**Charges Regulations**")
- The Petroleum (Local Content and Local Participation) Regulations, 2013 (L.I. 2204) ("**Local Content Law**");
- Petroleum Revenue Management Act, 2011 (Act 815) ("**PRMA Act**");
- Petroleum Revenue Management (Amendment) Act, 2015 (Act 893) ("**Amended PRMA Act**");
- Environmental Assessment Regulations, 1999 (L.I. 1652) ("**Environmental Regulations**"); and
- Petroleum Income Tax Act, 1987 (PNDCL 188).

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

The Minister of Petroleum (the "**Minister**") provides the overall policy direction in the management of oil resources in Ghana. The Attorney General, under the Ministry of Justice, assists the Minister in the negotiation and drafting of petroleum agreements (the "**Petroleum Agreement**")

and the required laws and regulations regulating the oil and gas sector.

The Petroleum Commission (the "**Commission**") regulates and manages the utilisation of petroleum resources in Ghana. It also coordinates the policies put in place by the Minister. In regulating the utilisation of petroleum resources, the Commission has the authority to make regulations, issue permits and carry out necessary inspections and audits related to the activities of petroleum companies operating in the upstream and midstream sectors.

The Environmental Protection Agency (the "**EPA**") is responsible for enforcement of Ghana's environmental laws. The EPA ensures that exploration and development of oil and gas is undertaken in an environmentally friendly manner.

The Ghana National Petroleum Corporation (the "**GNPC**") is responsible for the development, production and disposal of petroleum. The GNPC is required to ensure that Ghana obtains the greatest possible benefits from the development of petroleum resources. The GNPC participates in petroleum operations on behalf of Ghana with contractors under the Petroleum Agreements.

The National Petroleum Authority (the "**NPA**") is also given a broad mandate to regulate, oversee and monitor activities in the downstream petroleum industry. In particular, it sets prices and supervises the bulk storage and transportation of petroleum products.

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?

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)?

Under section 4(2) of the Local Content Law, a foreign company must incorporate a subsidiary company and afford an indigenous Ghanaian company at least 5% equity participation in the subsidiary company.

In practice, most foreign companies register a branch office during the process of negotiating the Petroleum Agreement with the government and then incorporate subsidiary companies before commencing petroleum operations in accordance with the law.

Licensing

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

Legal

Under the Petroleum Exploration Law, all petroleum existing in its natural state within the jurisdiction of Ghana is the property of the Republic of Ghana and is vested in the President on behalf of and in trust for the people of Ghana. The Minister is empowered by the Petroleum Exploration Law to directly represent the Republic of Ghana in negotiating for and entry into a Petroleum Agreement.

The Petroleum Exploration Law gives GNPC the authority to engage in the exploration, development and production of petroleum within the jurisdiction of Ghana without a Petroleum Agreement. GNPC participates in all Petroleum Agreements and discharges the Government's obligations under the Petroleum Agreement. Any other person who intends to engage in the exploration, development or production in the petroleum upstream sector is required to enter into a Petroleum Agreement with the Government and GNPC.

The Petroleum Agreement extensively specifies the terms and conditions for the grant of the petroleum rights, the duration of the rights and the royalties to be paid to the Government. It also specifies other important terms which must be aligned with Government policy.

Under the new Petroleum Exploration Law, the Minister (in consultation with the Commission) may grant a Reconnaissance Licence to allow contractors the right to undertake data collection, processing, interpretation or evaluation of petroleum data in the area specific to the licence. A Reconnaissance Licence shall be for a duration not exceeding 3 years.

Fiscal

— **Corporate Tax:** The Petroleum Exploration Law provides the fiscal model for granting rights to explore and produce oil and gas in Ghana. Under the Petroleum Exploration Law, a contractor is required to pay corporate

tax, including income tax and capital gains tax in accordance with applicable law, except when exempted under a Petroleum Agreement. Under the Income Tax Act of Ghana 2015 (Act 896), petroleum companies are subject to corporate tax at the rate of 35%.

- **Royalties:** The Republic of Ghana is entitled to a portion of petroleum produced and saved and not utilised in petroleum activities from each field. This portion is calculated as a percentage of gross daily production rates without regard to any prior deductions. The royalty shall be delivered to the Republic of Ghana in kind unless the Minister directs in writing that the royalty shall be paid in cash. The percentage of royalty payable by the contractor is negotiated by the contractor and the government in the Petroleum Agreement.
- **Annual acreage fee:** The Petroleum Exploration Law also provides that the contractor is required to pay annual acreage fees, in respect of the area to which the Petroleum Agreement relates, during the initial exploration period (and any extensions) unless otherwise exempted from such payments under a Petroleum Agreement.
- **Permit fees:** The contractor is required to register with the Commission in order to obtain a permit to undertake petroleum operations. The fees to be paid in order to obtain a permit are assessed by the Commission. The Commission requires all permits to be renewed each year.

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.

The process for obtaining an oil or gas interest in Ghana is by applying for an offshore or onshore block to the Minister. The applicant may then be invited to inspect data on available blocks at the Commission for a non-refundable fee of US\$1,000 on completion of a successful presentation by the applicant to the Commission.

The applicant is then required to make a formal application to the Minister for any block it wishes to obtain an interest in. A non-refundable fee of US\$10,000 is paid on submission of this application.

An evaluation committee is set up by the Minister to review and evaluate the application. On completion of the evaluation, recommendations are made to the Minister for his consideration. If the application is considered successful, the Minister sets up a negotiation team to negotiate a Petroleum Agreement with the applicant. Where the application is unsuccessful, the applicant is advised accordingly.

The draft Petroleum Agreement is prepared following successful negotiation between the applicant and the Government negotiation team and further deliberations are held between the Minister, the Minister of Finance, the

Minister of Justice and Attorney General and the Minister of Environment, Science and Technology.

The negotiated draft is further discussed and approved by Cabinet and signed by the Parties before it is forwarded to Parliament for ratification.

What is the customary duration of the relevant Licence?

Section 4 of the Petroleum Exploration Law provides that a Petroleum Agreement shall be valid for a total period not exceeding 25 years. The parties can negotiate for an extension of the period where the production from a field is projected to extend beyond the original term of the petroleum agreement. In the alternative the Minister may choose to execute a new Petroleum Agreement. The extension or execution of a new Petroleum Agreement is subject to Parliamentary approval.

The Petroleum Exploration Law fixes the maximum period for petroleum exploration at 7 years. This is normally divided into an initial 3 year phase followed by up to three extensions within the total exploration period. Depending on the size of the contract area, these phases can be negotiated. The contractor is required to relinquish part of the contract area at each extension of the exploration period.

A relinquishment of at least 50% of the contract area is required if the Contractor elects to enter into a first extension of the exploration period. If the Contractor elects to enter into a second and third extension, the retained contract area shall not exceed 25% of the original contract area. The detailed percentage of relinquishment is subject to negotiation in the Petroleum Agreement.

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?

The Government has a right, under the Petroleum Exploration Law, to participate in the operation of the petroleum operations on a declaration of commercial discovery made by the contractor. GNPC shall hold an initial participating carried interest of 15% for exploration and development and have an option to acquire an additional participating interest as determined in the petroleum agreement. Any additional interest acquired by GNPC shall be a paying interest in respect of costs incurred in the conduct of petroleum activities other than exploration costs.

The extent of the entitlement is not specified. In practice, GNPC limits its participation to the management of petroleum operations which includes forming a joint management committee to conduct and manage the petroleum operations. GNPC maintains only a carried interest with respect to exploration and development operations.

The PRMA and the Amended PRMA provide the mechanism for the payment of the participation and carried interest of the Government. The GNPC receives an annual disbursement from the Petroleum Holding Fund ("PHF") for the payment of its carried and participating interest in petroleum operations under its Petroleum Agreements.

There is no specific provision under the law for recovery of the carried costs. Before the Amended PRMA, a contractor could recover carried costs from the production revenues. But, under the Amended PRMA, all revenues are required to be paid into the PHF without any deductions. Thus, contractors would have to negotiate terms of recovery of the carried and participating interest with GNPC, including debt security structures. The contractor can also negotiate for tax credits with the Commissioner General of the Ghana Revenue Authority.

The PHF is a fund created under the PRMA to hold all petroleum revenue and taxes received from contractors, subcontractors and licensees operating in the upstream and midstream petroleum sectors in Ghana.

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

As above, the Petroleum Exploration Law does grant a right to the Government to participate but the GNPC generally limits its participation in petroleum operations to participating in a joint management committee.

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?

The Petroleum Exploration Law 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.

The law further prohibits the contractor (and any subcontractor) from transferring any share or shares in its incorporated company to an investor, either directly or indirectly, without the written consent of the Minister, if the effect of such a transfer is to give the third party control of such a company or to enable the third party to take over the interests of a shareholder who owns 5% or more of the shares in the company.

Approval of such a transfer must be sought by making a formal application to the Minister, who can refuse to provide such approval at his discretion.

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?

GNPC has a pre-emption right with respect to the disposal of petroleum interests by a contractor under a Petroleum Agreement. The GNPC has 90 days within which to exercise such right after it has been notified.

Economic support

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

Under section 58 of the Petroleum Exploration Law, licensees, contractors and subcontractors are required to provide the Minister with performance bonds or guarantees as the Minister may require for fulfilment of the obligations undertaken under the licence and for possible liabilities arising out of the petroleum activities under the licence or Petroleum Agreement.

The contractor is also required to provide particulars of its capital structure for the exploration, development and/or production activities.

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

The guarantees described above can be provided in the form of performance bonds.

Abandonment and Decommissioning

What abandonment regime is in place?

Are security deposits required in respect of future decommissioning liabilities?

Licensees or contractors that operate a petroleum facility are required to submit a decommissioning plan to the Minister for approval.

The decommissioning plan shall be submitted not more than 5 years and not later than 2 years before the date on which the use of the petroleum facility is expected to permanently cease operation or the license or the Petroleum Agreement to which the decommissioning plan relates will expire.

All licensees and contractors are required to establish a decommissioning fund.

With respect to Abandonments, contractors are required to submit an immediate notice of the decision to abandon a well to the Commission. Once an abandonment notice is submitted, the Contractor is required to treat and plug the abandoned well.

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 would negotiate the terms of a reclamation security agreement as well as the security deposit to be posted by the contractor.

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