Conducting oil and gas activities in Libya

Laws and regulations

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

In relation to the petroleum sector, Law No.25 of 1955 (the ‘**Petroleum Law**’) is still in effect. However, in 1961, 1965 and 1970 the law and the concessions were amended significantly with the terms and conditions changing to be heavily in favour of the Government.

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

The National Oil Corporation (‘**NOC**’), recognised by Decree No. 10 of 1979, is the State corporation regulating the oil sector and is the State representative in oil exploration contracts, regulating the affairs of completely owned companies, Joint Ventures (‘**JVs**’) and Exploration and Production Sharing Agreements (‘**EPSA**’).

NOC is responsible for many aspects of the upstream and downstream oil and gas sector in Libya, including licensing procedures and implementation, oil policy and contract negotiations.

NOC carries out the objectives of Libya’s development plan by increasing, developing and exploiting oil and gas reserves, and operating and investing in those reserves. Furthermore, NOC has de facto taken over the technical and regulatory functions that were previously held by the Minister of Petroleum.

The new government intends to divide the NOC into two bodies, as follows:

1. NOC – Exploration and Production of Oil and Gas.
2. NOC – Refinery and Petrochemicals.

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?

The Petroleum Law established a concessionary framework for the exploration and production of petroleum within Libya. In Article 1 it laid down the basic rule that all petroleum in Libya in its natural state, contained in strata, is the property of the Libyan State and that no person shall explore or prospect for, mine or produce petroleum unless authorised by a permit or concession issued under the law.

The Minister of Petroleum shall consider applications for permits or concessions submitted by eligible applicants. At present, the usual way for a foreign oil company to undertake oil operations in Libya, unless it takes over an existing concession interest, is to enter into an EPSA or a Development and Production Sharing Agreement (‘**DEPSA**’) with NOC.

The Government usually authorises NOC to announce a need for EPSA candidates, usually announced in the international media, and this is done in the form of open bidding. The bids are made by the foreign parent company and then the company that is successful in the bid must open a branch office in Libya.

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)?

There are certain prerequisites outlined in the Petroleum Law under Article 5 which stipulate as follows:

The Minister of Petroleum shall consider applications for permits or concessions submitted by eligible applicants only, and in determining the eligibility of any applicants the Minister of Petroleum shall have regard to:

- the furtherance of the public interest;
- the applicant's compliance with relevant laws and regulations;
- the applicant's previous activities in the petroleum industry;
- the applicant's previous experience in the conduct of similar operations; and
- the applicant's financial and technical capacity to conduct the contemplated operations.

In determining the eligibility of an applicant who is a subsidiary of a company or a member of a group of companies, due consideration shall be given to the qualifications held by the parent company or group of companies of which he is a member and the extent of the availability to the applicant of such qualifications.

Licensing

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

No income tax is levied on the foreign company's share of production. The foreign company is subject to custom duties in accordance with the Petroleum Law and is exempt from duties on the import of plant, tools, machinery, equipment and materials used for petroleum operations.

All material, equipment, machinery and supplies purchased by the foreign entity for use in petroleum operations under an EPSA becomes the property of NOC either immediately after purchase if purchased in Libya or at the time it is landed at a Libyan port if purchased outside Libya.

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.

Individuals are not authorised to acquire an interest. Only foreign companies can acquire oil interests and this is subject to negotiation and sometimes open bidding.

What is the customary duration of the relevant Licence?

Concessions are granted for the period of time requested by the applicant provided that such period shall not exceed 50 years. A concession may be renewed for any period so that the total of the two periods does not exceed 60 years.

The model EPSA provides for a contractual period of 25 years. A certain number of years is agreed upon as the exploration period and at the end of the exploration period the EPSA terminates in respect of all parts of the contract area other than the exploitation areas.

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 the right to participate and be carried in the Licence. The foreign company undertakes all exploration and appraisal expenditures at its own risk. Development expenditure and exploitation capital expenditure are usually shared 50/50 between NOC and the foreign company. The foreign company is guaranteed an initial share of production with a view to enabling it to recover the expenditure it has incurred during the exploration, development and production phases.

EPSA IV allows for NOC to receive a share of production with the remainder being available for cost recovery by the company. Under EPSA IV provisions cost recovery ranges from 30% to 40% depending on the field size. Once full cost recovery has taken place, net production (profit oil) is shared between the NOC and the company.

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

An operator acts under the supervision and control of an Owner's Management Committee composed of three members, two (including the chairman) appointed by NOC, and one by the operator. This Committee decides upon the major issues relevant to petroleum operations (approval of budgets and work programme, the contractors' list, and contracts above a certain value, etc).

Following the declaration of a commercial discovery, the operator is managed by an Operator's Management Committee that acts as the board of management, under the supervision of the Owner's Management Committee. This Committee also has three members, two (including the chairman) appointed by NOC and one by the operator. Decisions are taken by simple majority vote.

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?

Article 17 states that permits and concessions shall not be assigned except with the written consent of the Minister of Petroleum, which may impose any conditions that it deems appropriate in the public interest.

The notice of the grant, renewal, assignment, revocation, termination or surrender of the whole or any part of any permit or concession must be published in the Official Gazette, as per Article 19.

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 recommendation in favour of an assignment would usually come from the NOC and the Prime Minster.

Economic support

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

A parent company guarantee is required to cover the operator's payment and other obligations under the EPSA. This guarantee may be a corporate guarantee or a bank guarantee.

The latest EPSA agreement introduced two bonus payments, a signature bonus and a predetermined production bonus. Neither bonus can be treated as a recoverable cost.

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

An applicant may be required before the grant of a concession to deliver to the Minister of Petroleum a guarantee by way of a bond or banker's guarantee in a sufficient sum not exceeding fifty thousand Libyan Dinars (LD 50,000) to secure the due performance of its obligations under all concessions held by it in Libya. Such bond or banker's guarantee shall be maintained as a constant figure throughout the life of the concession, and such bond or banker's guarantee shall be accepted by the Director of Customs in lieu of any bond he may require under the Customs Law.

Abandonment and Decommissioning

What abandonment regime is in place?

Are security deposits required in respect of future decommissioning liabilities?

Article 3 of the Petroleum Regulation details decommissioning and abandonment requirements. The concession holder should notify the NOC of its intended abandonment 3 months prior to the abandonment date.

Expenses for abandonment related to exploration and appraisal operations is the sole responsibility of the company. The company shall be liable for 50% of expenses incurred as a result of development and exploitation operations.

Article 26 provides that once the A factor contained in Article 12.1.2(b)(ii) exceeds 1 the operator shall submit an abandonment plan, which, if approved, shall provide for monthly cash calls to be made to the company for its share. NOC shall be cash called for its share once production terminates or a field is abandoned before the end of the term of the EPSA.

If at the end of the EPSA, NOC continues petroleum operations, the company shall be discharged from future costs of abandonment. However, the company shall indemnify and hold NOC harmless against any claim arising from previous joint petroleum operations to the extent of its share under the EPSA for a period of 15 years from the date of such operations.

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