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Conducting oil and gas activities in Malawi

Laws and regulations

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

The Petroleum (Exploration and Production) Act (Cap 61:02) (the '**E&P Act**') and the Liquid Fuels and Gas (Production and Supply) Act (Cap 50:03) (the '**Production and Supply Act**') govern oil and gas exploration and production in Malawi.

The E&P Act mainly deals with exploration and production of petroleum within Malawi whereas the Production and Supply Act mostly deals with extraction, conversion, importation, blending, transportation, storage, distribution, wholesale and retail sale of liquid fuels and gas within Malawi.

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

The Ministry of Energy and Mining is the Government Authority responsible for the regulation of prospecting, exploration, discovery and development of oil and gas in Malawi.

The Malawi Energy Regulatory Authority ('**MERA**') is responsible for the regulation of production, extraction, conversion, importation, blending, transportation, storage, distribution, wholesale and retail of liquid fuels and gas.

Entry requirements

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

No Licence:

- shall be granted to an individual unless he is a citizen of Malawi or has been a resident in Malawi for a period of four years immediately preceding the date of the application for a Licence;
- being a petroleum exploration licence, shall be granted to a body corporate unless the body corporate is:
 - (i) incorporated or established in Malawi; or
 - (ii) approved by the Minister of the Malawi Government responsible for petroleum if it is not incorporated in Malawi; or
- being a petroleum production licence, shall be granted to a body corporate unless the body corporate is incorporated or established in Malawi.

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

Under the Exchange Control Regulations of Malawi every foreign investor needs to register a foreign investment with the Exchange Control authorities before the investment is made to enable externalisation of dividends and repatriation of capital. Apart from the exchange approval control requirement, there are no foreign investment approval requirements or restrictions and there is no minimum local shareholding requirement in the entity undertaking the activity.

Licensing

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

Legal

The E&P Act vests the entire property in and control over petroleum in Malawi in the President on behalf of the people of Malawi, but without prejudice to the exercise of any right under or pursuant to the E&P Act.

Fiscal

Revenue which the Government can obtain from oil and gas exploration and production industry includes:

- fees on application for grant and renewal of the petroleum exploration licence and petroleum production licence;
- annual charges for the petroleum exploration licence and petroleum production licence;
- royalty on petroleum recovered at the rate provided for in the Licence;
- income tax; and
- rent resources tax.

Taxes and rates of taxes applicable change from time to time. It is advisable to consult an accountant in Malawi on taxes applicable at any point in time.

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

Applications for grant or renewal of a petroleum exploration licence or petroleum production licence are made to the Minister responsible for energy and mining under the E&P Act. There are no prescribed forms for the applications. The fees payable for the Licences are as follows:

- application for grant of petroleum exploration licence: K250,000.00 (~US\$355.00)
- application for grant of petroleum production licence: K500,000.00 (~US\$710.00)
- application for renewal of petroleum exploration licence: K500,000.00 (~US\$710.00)

There is no prescribed timeframe within which a Minister should deal with an application for a Licence or renewal of a Licence under the E&P Act.

Under the Production and Supply Act, an application for production of crude oil and gas, ethanol fuel or bio-diesel is to be made to MERA in the prescribed form. Fees payable on an application for a Licence or renewal thereof under the Act are 5 tambala (US\$0.00007) per litre to be produced. There is no prescribed timeframe for MERA to consider and issue or renew a Licence.

What is the customary duration of the relevant Licence?

An exploration licence is valid for a term as stipulated in the Licence, which shall not exceed 4 years. The term may, if the Minister considers proper, be preceded by a preparation period not exceeding 1 year. The Licence may be renewed a further term not exceeding 3 years, and may, where it is affected by force majeure, be extended.

Under the E&P Act, a petroleum production licence shall continue in force for a term of 25 years, which may be preceded by a preparation period as determined by the Minister. The Licence may also be renewed for such term as the Minister may deem fit.

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 does not have any right to participate and be carried in the Licence.

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

The Government does not have any right to participate in operatorship of the Licence.

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?

A transfer of a petroleum exploration or production licence or an instrument by which a legal or equitable interest in, or affecting, a Licence is created, assigned or dealt with, whether directly or indirectly, requires written approval of the Minister without which it will be of no force.

There is no prescribed timeframe within which the Minister should give his approval. Fees on assignment of a petroleum exploration licence are K150,000.00 (~US\$213.00) and for a petroleum production licence are K510,500.00 (~US\$1,726.60).

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?

There are no pre-emptive rights reserved to any Government entities.

Economic support

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

No

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

No

Abandonment and Decommissioning

What abandonment regime is in place?

Are security deposits required in respect of future decommissioning liabilities?

There are no specific statutory provisions in respect of an abandonment regime. The E&P Act, however, requires that a licensee should conduct its operations in a matter which protects and/or preserves the environment. There are no prescribed security deposits required in respect of future decommissioning liabilities.

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