Conducting oil and gas activities in Mauritania

Laws and regulations

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

The main legislation governing petroleum activities is Law no. 2010-033 dated 20 July 2010, as amended by Law no. 2011-044 dated 25 November 2014 and Law no. 2015-016 dated 29 July 2015 (the **'Petroleum Code**').

Due to the general nature of the Petroleum Code, most of the specific provisions governing petroleum exploration and production are included in production sharing contracts (*contrats de partage de production* or '**PSCs**').

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

The main institutions of the Mauritanian hydrocarbons sector include:

1. Ministry of Petroleum, Energy and Mines (*Ministère du Pétrole, de l'Energie et des Mines or* '**MPEM**');
2. SMHPM, (*Société Mauritanienne des Hydrocarbures et de Patrimoine Minier*) the National Hydrocarbons Company ('**NHC**'), established in May 2009; and
3. National Fund for Hydrocarbon Reserves (*Fonds national des revenues des hydrocarbures*), which acts as a sovereign fund dedicated to allocating oil and gas revenue to the State's budget.

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?

According to the Petroleum Code, any contractor carrying out petroleum activities in Mauritania is required to enter into a PSC. Foreign contractors must incorporate a local company or a branch to carry out exploration and production activities in Mauritania.

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 is no limitation on foreign investment in the Petroleum Code. Local and foreign investments are treated equally.

Local content requirements are also expressly included in the Petroleum Code. The relevant undertakings relate to:

1. Giving preference to local companies for construction contracts or services contracts provided they offer equivalent conditions of quality, quantity and price;
2. Hiring, in priority, local employees with equivalent qualifications; and
3. Funding and establishing training programmes for local employees.

Licensing

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

Legal

Contractors are granted rights to explore, develop and produce oil and gas by obtaining authorisations from the State, and by entering into a PSC with the MPEM which defines the terms of such authorisations. Details of the relevant authorisations are as follows:

1. **Prospecting authorisation** (*autorisation de reconnaissance*). The holder of a prospecting authorisation is entitled to perform preliminary surface prospecting works on a non-exclusive basis. This authorisation is granted for a 12 month period and is renewable once for a further 12 month period. It does not confer any preferential right to its holder to enter into a PSC. Prospecting results are disclosed to the MPEM. The transfer of the rights and obligations arising from such authorisation is forbidden.
2. **Exploration authorisation** (*autorisation d'exploration*). An exploration authorisation is granted on an exclusive basis for an initial 10 year period consisting of three phases. The PSC provides for relinquishment of 25% of the area covered by the authorisation at the end of the first and second phases. An additional 12 month period may be granted for completion of drilling or appraisal works. Commercial discovery entitles the holder to be granted a production right, subject to the approval of a development plan.
3. **Production authorisation** (*autorisation d'exploitation*). A production authorisation is granted for a maximum period of 25 years (30 years for gas) with one renewal period of up to 10 years. An additional retention period may be granted for: (i) a 3 year period for oil and wet gas; and (ii) a 5 year period for dry gas.

Exploration and production activities may only be conducted through a PSC under which the State grants an exclusive exploration right and, in case of a discovery, an exclusive production right. The contractor assumes financial and operating risks. Production is shared with the State in accordance with the PSC.

A model PSC is provided by the Government to serve as a basis for negotiations.

PSCs must be signed by the MPEM after deliberation of the Council of Ministers and are published in the Official Gazette. In addition, Mauritania implements the principles of the Extractive Industries Transparency Initiative.

Fiscal

Contractors are subject to taxes and other contributions under the Petroleum Code, the General Tax Code and the PSC.

1. **Bonuses:** a signature bonus is due upon signing of the PSC, which also provides for a production bonus.
2. **Surface area royalty:** an annual surface area royalty is due as set out in the PSC.
3. **Corporate income tax:** the applicable rate is specified in the PSC and is at least equal to the general tax rate of 25%.
4. **VAT:** exports of hydrocarbons, imports and purchase of goods related to petroleum operations are exempted from VAT.
5. **Customs:** imports of approved goods exclusively related to petroleum operations are exempted from customs duties.
6. **Abandonment deposit:** contractors are required to deposit abandonment costs in a ring-fenced bank account as specified under the PSC.
7. **Support contributions:** various support contributions are provided for and are to be specified in the PSC.

In addition to the above fiscal regime, Mauritania has a prescribed system for revenue sharing in relation to production activities:

1. Cost oil is limited to 60% for oil (65% for dry gas) of total production.
2. Profit oil revenue sharing as well as its calculation method is as set out in the PSC.

Furthermore, contractors have the obligation to supply the domestic market with a defined part of their production pursuant to the terms of the PSC.

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.

Access to Mauritanian petroleum sector is granted to companies having the required technical and financial capabilities, by means of a tender procedure initiated by the MPEM and, occasionally, by direct negotiations.

What is the customary duration of the relevant Licence?

See the 'Legal' section above for information on the duration of relevant authorisations.

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 State may participate in petroleum operations either directly or through the NHC. During exploration a 10% interest in each PSC shall automatically be allocated to the State. All costs and risks associated with that interest are incurred by the contractor. The PSC must confer the option for the State to acquire at least a 10% additional participation during production (costs associated with that interest are to be borne by the State).

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

The State may participate as operator either directly or through the NHC in petroleum operations.

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?

Transfer of the rights and obligations arising from PSCs and authorisations is subject to the notification to and prior approval of the MPEM.

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 Petroleum Code does not grant the State a pre-emptive right in relation to assignment of petroleum rights. However, such right may be negotiated in the PSC.

Economic support

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

The Petroleum Code does not require a parent company guarantee where companies forming the contracting entity are subsidiaries of an oil company. Such guarantee may be a negotiated term in the PSC.

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

Securities in respect of work commitments are expressly provided for in the Petroleum Code. Other types of securities may also be a required term in the PSC.

Abandonment and Decommissioning

What abandonment regime is in place?

Are security deposits required in respect of future decommissioning liabilities?

The Petroleum Code requires abandonment and rehabilitation obligations to be included in the PSC. In particular, contractors are required to deposit abandonment costs in a ring fenced bank account as specified under the PSC.

Facilities and equipment from which the contractor has recovered its costs may be transferred free of charge to the State.

In addition, pursuant to the Petroleum Code, the PSC must provide for the obligation to include environmental provisions, in particular environmental impact studies and management plans, in the PSC.

Contacts

Jean-Jacques Lecat
Partner, Africa Practice
T +33 1 47 38 56 82
M +33 6 85 55 34 88
E jean-jacques.lecat@cms-bfl.com

CMS Bureau Francis Lefebvre
2, rue Ancelle
92522 Neuilly-sur-Seine, France

T +33 1 47 38 56 82
F +33 1 47 38 56 84

Bob Palmer
Partner, Energy
T +44 20 7367 3656
M +44 7831 248814
E bob.palmer@cms-cmck.com

CMS Cameron McKenna LLP
Cannon Place
78 Cannon Street
London EC4N 6AF

T +44 20 7367 3000
F +44 20 7367 2000

www.law-now.com

www.cms.law