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Law . Tax

Conducting oil and gas activities in Namibia

Laws and regulations

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

The relevant legislation in Namibia is:

- Article 100 of the Constitution of the Republic of Namibia 1990 (the '**Constitution**');;
- The Petroleum (Exploration and Production) Act 1991 (Act 2 of 1991) (the '**Petroleum Act**');;
- The Petroleum (Taxation) Act 1991 (Act 3 of 1991) (the '**Taxation Act**') as amended by the Petroleum Laws Amendment Act of 1998;
- The Water Act 54 of 1956;
- The Atmospheric Pollution Prevention Ordinance 11 of 1976;
- The Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981; and
- The Environmental Management Act 7 of 2007.

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

The Petroleum Act is administered by the Minister of Mines and Energy, who appoints a Commissioner of Petroleum Affairs ('**Commissioner**') and a Chief Inspector of Petroleum Affairs ('**Chief Inspector**'). These officers exercise or perform the powers, duties and functions conferred or imposed upon them by or under the provisions of the Petroleum Act and such other functions as may be imposed upon them by the Minister. The Commissioner and Chief Inspector are assisted by such

other officers as may be designated by the Minister of Mines and Energy for such purpose.

The Petroleum Ancillary Rights Commission (the '**Commission**') is also established under the Petroleum Act. The Commission principally deals with disputes between licence holders and landowners.

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?

Licences are granted by way of application. An application must contain particulars of the applicant's proposed minimum exploration operations and expenditure in respect of the block or blocks to which the application relates, amongst others.

Section 10 of the Petroleum Act states that exploration and production licences may only be granted to companies but there is no statutory requirement for the company to be incorporated in Namibia. However, within 21 days of establishing a place of business in Namibia, all foreign companies must lodge with the Registrar of Companies such relevant documents to constitute the foreign company locally.

The Petroleum Act requires an applicant for a petroleum licence to enter into a petroleum agreement with the State. This agreement must be entered into before an exploration or production licence is issued to an applicant. The content of the petroleum agreement is prescribed by the Petroleum Act.

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 legislation providing for local content, however, the Cabinet has resolved to create a policy in this regard. The New Equitable Economic Empowerment Framework ('NEEEF') is aimed at, amongst other things, ensuring a socially just society, in which the Namibian people have equitable and sustainable share in their resources. This policy outlines the pillars on which its objectives will be attained. It provides for a scoring system which serves to measure compliance with the policy. The pillars are listed as:

- Ownership;
- Management control and employment equity;
- Human resources and skills development;
- Entrepreneurship, development and marketing;
- Corporate social responsibilities; and
- Value addition, technology and innovation.

Achieving the minimum score in the three sectors listed below is mandatory:

Ownership

- 25% of the shares held in any new businesses must be held by previously disadvantaged Namibians before they are allowed to commence business;
- **'Previously disadvantaged Namibians'** are those Namibians that are 'racially disadvantaged persons, women and the disabled';
- **'Racially disadvantaged persons'** are those persons that belong to a racial or ethnic group which was or is, directly or indirectly, disadvantaged as a consequence of social, economic, or educational imbalances arising out of racially discriminatory laws or practices before the independence of Namibia;
- Existing businesses must meet the minimum score target of 10 points; and
- The minimum score of 10 points for 25% shareholding being held by previously disadvantaged Namibians, must be complied with before a business can enter into a public contract for procurement, obtain rights to exploit natural resources or continue to conduct a licensed trade.

Management control and employment equity

- For new businesses, 50% of the combined board and top management structures must include previously disadvantaged Namibians before they are allowed to commence business;

- Existing businesses should comply with the minimum score of 10 points, which can be achieved if the combined board and top management structures include 50% previously disadvantaged Namibians; and
- The minimum must be met in order to access mineral rights.

Human resources and skills development

- All employers with an annual payroll of over N\$1 million must pay a Vocational Education and Training ('VET') levy;
- Businesses will score better if their own training expenditure is more than 1% of the payroll;
- Employment visas for expatriates will depend on the business' scoring in this section; and
- A minimum of 10 points for expenditure representing 0.5% of gross wages being spent on training, calculated as total training costs less the VET levy contribution.

Licensing

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

Legal

Under Article 100 of the Constitution ownership of all natural resources on, in or under any land in Namibia is vested in the State, unless they are otherwise lawfully owned. This includes all oil and natural gas, which is generally referred to as petroleum in Namibian legislation.

The upstream petroleum industry in Namibia is primarily regulated by the Petroleum Act. The Petroleum Act provides for the reconnaissance, exploration, production and disposal of petroleum, as well as the control over petroleum. It provides that all rights in respect of petroleum vest in the State notwithstanding any right with regard to the ownership of the land where the petroleum is found. No person may carry on any operations in respect of petroleum without the necessary licence issued by the Ministry of Mines and Energy. The Petroleum Act also provides for the payment of petroleum royalties.

The Taxation Act provides for the payment of petroleum income tax and additional profit tax. These apply in tandem with environmental legislation.

Aside from the legislative framework regulating the petroleum industry, Namibia also has an out-dated white paper on energy policy, which was published in May 1998. This policy has as its goals: (i) effective energy sector governance; (ii) security of supply; (iii) social improvement; (iv) investment and growth; (v) economic competitiveness; and (vi) efficiency and sustainability.

Fiscal

Rents

The Petroleum Act provides for the payment of annual charges by holders of exploration and production licences over the exploration and production areas. The annual charges are calculated by multiplying the number of square kilometres included in the block or blocks to which the licence relates by different values depending on the nature of the licence. In the case of exploration licences the multiplier depends on the particular period during which operations are executed, and in the case of production licences the multiplier used is 1500.

Royalties

Royalties are charged by virtue of the Petroleum Act. They are payable quarterly on or before the last day of each month following each quarter. The rate at which royalties are charged depends on the licensing round in which the licence was issued. Royalties on licences issued during the first and second licensing rounds are charged at a rate of 12.5% of the market value of the licence, determined in the terms and conditions of such licence and based on the petroleum produced and saved in the production area during each quarter. Royalties on licences issued during the third and fourth licensing rounds are charged at a rate of 5% of the market value.

Tax

The tax regime for petroleum exploration and production activities is regulated by the Taxation Act. The Taxation Act provides for the levy and collection of petroleum income tax and additional tax on profits. The rate of petroleum income tax is 35% of the taxable income received by or accrued from a licence area. Each licence area is assessed separately and losses in one cannot be set off against profits in another.

The Taxation Act further provides for levying of additional tax on profits in respect of the first, second and third accumulated net cash position determined for each tax year.

Annual surface charges are also payable by holders of exploration and production licences and are calculated on the number of square kilometres included in the block to which the licence relates.

Other tax laws that apply to the oil industry are:

- The Income Tax Act 24 of 1981, as amended, which provides for withholding tax of 10% imposed on all management, consulting, technical, administrative and entertainment services paid by a Namibian resident to a non-resident, subject to the provisions of any double taxation agreements;
- The Value Added Tax Act 10 of 2000 which currently rates VAT at 15%; and
- The Stamp Duties Act 15 of 1993 which provides for the collection of stamp duties on instruments at rates determined in the schedule to the Act.

The Ministry of Finance is the government body that exercises tax authority.

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 procedure for acquiring such rights is by way of application, which must contain particulars of the applicant's proposed minimum exploration operations and expenditure in respect of the block or blocks to which the application relates.

What is the customary duration of the relevant Licence?

An exploration licence is valid for a maximum period of 4 years and may be renewed twice for periods of 2 years per renewal. The maximum period for which one can hold an exploration licence is 8 years.

A production licence is valid for a maximum period of 25 years and may be renewed only once for a further period of 10 years. The maximum period that one can therefore hold a production licence is 35 years.

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?

Before an exploration or production licence is issued, the Minister of Mines and Energy must enter into a petroleum agreement ('**Petroleum Agreement**') with the person concerned. The Petroleum Agreement may contain terms relating to the participation, including the acquisition of equity share capital, by the State. These terms are subject to agreement to be reached with the State. There is no maximum participation interest set and there are no mandatory carry requirements provided for under the Petroleum Act.

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

The Petroleum Act does not confer any right to the State to participate in the operatorship of a 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?

The consent of the Minister of Mines and Energy is required for assignment of any Licence, or any right, power or interest therein.

No fees are payable for the assignment of interests in a licence and there is no fixed period within which the Minister must make a decision on the application for assignment of interest. Typically however, this may take anywhere between 2 weeks to 4 months.

Further, Competition Commission approval may be necessary should a change of control be established over the whole or part of the business of the target undertaking and the value of the transaction breach certain merger thresholds.

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?

None.

Economic support

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

The incorporation of terms and conditions providing for performance bonds and parental guarantees to ensure the due and proper performance by the company of its obligations are typically agreed to in Petroleum Agreements.

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

The above bonds and guarantees are the only security required.

Abandonment and Decommissioning

What abandonment regime is in place?

Are security deposits required in respect of future decommissioning liabilities?

The Petroleum Act provides that the holder of a production licence shall, on a date determined by the Minister of Mines and Energy by written notice to such holder, which shall not be earlier than the date on which 50% of the estimated recoverable reserves of petroleum in the production area would have been produced, establish a trust fund for the purpose of decommissioning facilities. The board of trustees determines the amount to be deposited annually not later than 30 days after the end of each calendar year and it is calculated in accordance with a formula based on the levels of production as may be determined by the Minister of Mines and Energy by notice in the Gazette.

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