

Oil Regulation

in Ghana

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GENERAL

Key commercial aspects

Describe, in general terms, the key commercial aspects of the oil sector in your country.

The upstream petroleum industry in Ghana was energised with the commercial discovery of oil in the Jubilee Field in 2007. The Jubilee Field straddles the Deepwater Tano and West Cape Three Points basins some 70km offshore of Ghana and 130km southwest of the port city of Takoradi. The field was estimated to have recoverable reserves of up to 1Bstb. As of June 2016, the Jubilee Field was estimated to have recoverable reserves of 455MMstb and 456Bscf.

Subsequently, further exploration led to the discovery of TEN Fields, Ghana's second major oil development, which was brought onstream and produced its first oil in August 2016. The field holds recoverable oil reserves of about 240MMstb, gas reserves of about 360MMscf, and is estimated to produce about 80,000Bbls/day at peak. The TEN project takes its name from the three offshore fields under development: Tweneboa, Enyenra and Ntomme, which are situated in the Deepwater Tano block, about 60km offshore of western Ghana. Drilling in the field was previously halted owing to a maritime dispute between Ghana and the Ivory Coast. The ruling delivered on the dispute by the International Tribunal of the Law of the Sea in September 2017, however, did not affect the field and drilling is, therefore, expected to commence in 2018.

In January 2015, Ghana took a major step towards the realisation of energy and power security with the signing of an agreement for the development of the Offshore Cape Three Points integrated oil and gas project, estimated to cost about US\$7 billion, which is being undertaken by ENI Spa in collaboration with Vitol Energy. The project is expected to develop the Sankofa and Gye Nyame fields to provide sufficient gas to operate Ghana's thermal power plants for 20 years. Oil production from the field commenced in 2017 and the fields are expected to commence gas production in 2018. As of June 2016, the field was estimated to hold oil reserves of 204MMstb and gas reserves of 1,107Bscf.

The upstream sector deals mainly with exploration, drilling, production and transportation of crude oil. The downstream sector comprises refining, storage, importation, transportation, distribution and marketing of petroleum products. Both sectors are regulated by a number of laws. The commercial aspects of Ghana's oil industry relate mainly to the marketing and distribution of crude oil and crude oil products as well as the development and sale of natural gas.

Downstream petroleum business operations have been dominated by indigenous Ghanaian oil marketing companies for several decades. Most of these companies have been dominant players in bulk storage, transportation and the retail of petroleum products.

The marketing and distribution of oil products is largely in the hands of private oil marketing companies. These include Total, Oando, Engen, Goil and small private operators. The marketing of Ghana's crude oil entitlement abroad has been awarded to Vitol SA and Cirrus Oil Services after they carried out a marketing process and obtained the best commercial terms for Ghana. They have marketed Ghana's first cargo to Sun International, a subsidiary of Sunoco Inc.

The recent oil discovery has brought to the fore additional investment and business opportunities in the petrochemical and natural gas industry. However, indigenous companies currently lack the required capacity to take advantage of these opportunities.

The development and sale of natural gas is the next major commercial component of the oil sector. Significant quantities of natural gas are expected to be produced from the Jubilee Field and the Sankofa and Gye Nyame oilfields. It is estimated that 1,000scf of gas will be produced with each barrel of oil from the Jubilee Field alone. This 'associated gas' will be processed to extract natural gas liquids and liquefied petroleum gas (LPG).

At the peak of phase I of the Jubilee production, about 80 to 100MMscf will be available to Ghana. Monthly revenues from the natural gas liquids to be recovered under the project are estimated at more than US\$30 million. The Ghana National Petroleum Corporation (GNPC) has so far been managing all aspects of the gas commercialisation initiative,

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including commercial arrangements, financing and project management.

The National Gas Development Taskforce has also been established to review all aspects of the gas commercialisation project, including its technical, commercial, economic and financing options, and to make recommendations on the most efficient and viable ways of bringing the project to fruition.

The cost of the infrastructure required to commercialise the natural gas from the Jubilee Field has been estimated to be more than US\$1 billion. The project has been delayed.

However, the Gas Development Taskforce has submitted its report to the government for implementation. It is expected that full-scale development and gas production will commence on the basis of the findings of the Gas Development Taskforce.

Energy mix

What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

Approximately 70 per cent of Ghana's energy needs are covered by oil as opposed to other sources of energy. Petroleum is used in the form of diesel fuel, fuel oils, petrol, kerosene, LPG and natural gas for transportation and power generation.

Present consumption of petroleum products is in the region of 950,000 tonnes per year. Ghana's oil discovery also led to the need to increase local refining capacity to meet both domestic demand and exports.

At present, less than 50 per cent of domestic demand is met by the Tema Oil Refinery (TOR). To bring refining capacity to acceptable levels, there is a need to expand the capacity of TOR to improve its operations.

Ghana does not currently depend on nuclear or other non-conventional sources of energy to meet its energy consumption requirements, although there have recently been suggestions of nuclear power generation.

Government policy

Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The Ministry of Energy has the overall responsibility for providing policy direction within the energy sector of the national economy. It has an additional responsibility for the formulation and implementation of general policies relating to the energy sector. In 2006, it formulated Ghana's energy policy, the Strategic National Energy Plan, which spans a 20-year period. The policy seeks to respond to the country's energy vision needs with 10 broad objectives.

The Strategic Energy Plan is intended to achieve, inter alia, the following objectives:

- establish an optimal blend of increasing demand, investment in generation and transmission, and energy efficiency;
- optimise the conjunctive use of commercial grid electricity and imported fossil fuel and renewable energy such as wood fuels, which constitute over 60 per cent of Ghana's energy usage; and
- broaden the sources and types of energy supply and integrating them into high-quality service for the growth of the economy.

The policy framework has also been formulated to take account of the existing socioeconomic and environmental

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policies, and the links between the energy sector and other sectors of the economy.

Pursuant to this broad objective, the Energy Commission has been established as the lead agency to coordinate the general policies relating to the energy sector.

The Energy Commission performs functions relating to the regulation, management, development and utilisation of energy resources. Additionally, it grants licences for the transmission, wholesale supply, distribution and sale of electricity and natural gas, refining, storage, bulk transportation, marketing and sale of petroleum products. The Energy Commission also regulates the licensing regime for the distribution of gas.

Also, Ghana has a national energy policy, which was formulated in February 2010. The national energy policy provides a concise outline of the government's policy direction in order to contribute to a better understanding of Ghana's energy policy framework. Among others, the national energy policy serves as a guide to key stakeholders and institutions in the energy sector highlighting the definition and implementation of key activities in respect of their mandates.

The national energy policy covers a broad spectrum of issues and challenges relating to the following areas:

- the power subsector;
- the petroleum subsector;
- the renewable energy subsector;
- waste to energy;
- energy efficiency and conservation;
- energy and the environment;
- energy and gender; and
- managing the sector's future.

In formulating the policies and laws regulating a specific subsector such as petroleum operations, due regard is given to this broad regulatory and strategic framework. The specific laws that have been promulgated to regulate the oil industry include the Petroleum (Exploration and Production) Act 2016 (Act 919) (which repealed the Petroleum (Exploration and Production) Law 1984 (PNDC Law 84)), the National Petroleum Authority Act 2005 (Act 691), the Petroleum Income Tax Act 1987 (PNDC Law 188) and the Ghana National Petroleum Corporation Act (PNDC Law 64). In July 2011, the Petroleum Commission Act 2011 (Act 821) also came into being.

Registering a licence

Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

Under the new Petroleum Exploration and Production Act, the Petroleum Commission, as part of its regulatory function, is required to establish and keep a register of all petroleum agreements, licences, permits and authorisations of the upstream oil companies it registers. Presently, the register is electronic and is available on the Petroleum Commission's website. Anyone may access the register at no fee.

The register is maintained by the Petroleum Commission and contains information on petroleum agreements signed by the Ghanaian government as well as the contract areas covered by each petroleum agreement. The register also contains information on who the operator of each contract area is, the other contracting parties, the interest held by the operator and each party in the contract area, and the current phase of operations, among others.

Legal system

Describe the general legal system in your country.

Ghana operates a legal system based on the common law system. The 1992 Constitution of the Republic of Ghana has put in place stable democratic institutions and has created an environment that respects the rule of law. In recent times, the government has demonstrated an increasing respect for the rule of law. This can be seen in its compliance with decisions handed down by the courts and findings of commissions of inquiry that have found some government officials at fault. However, there has been speculation about some cases involving politicians, in which investigations have been fraught with undue delays. These cases have created the perception of interference by the government.

The people of Ghana also generally obey the country's laws and abide by court decisions. This was demonstrated in the recent election petition case.

Ghana has entered into a number of bilateral investment treaties with other countries, most of which contain dispute resolution provisions. The Alternative Dispute Resolution Act 2010 (Act 798) (the Arbitration Act or Arbitration Law) regulates domestic arbitral proceedings.

The Arbitration Law does not regulate foreign arbitral proceedings. However, it provides the framework for the enforcement of foreign arbitral awards. Arbitration proceedings are considered foreign when they are undertaken outside Ghana under a system of law other than the laws of Ghana. To be enforced, a foreign award is required to satisfy the following conditions:

- the award was rendered by a competent authority under the laws of the country where the award was made;
- a reciprocal agreement exists between Ghana and the country in which the award was made;
- the award was made under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) or under any other international convention on arbitration ratified by parliament;
- the party has produced the original award or a certified copy thereof and the agreement pursuant to which the award was made or a duly authenticated copy;
- there is no appeal pending against the award in any court under the law applicable to the arbitration; and
- six years have not elapsed since the judgment was delivered either at first instance or on appeal, whichever may be the case.

The anti-bribery and anti-corruption legislation in force in Ghana consists of a framework of rules and procedures for public services on the one hand and private sector businesses on the other, with sanctions applicable. A number of laws in Ghana provide for combating bribery and corruption.

In July 2006, the government of Ghana passed the Whistle Blower Act to encourage Ghanaian citizens to volunteer information on corrupt practices to appropriate government agencies. In December 2006, the Commission on Human Rights and Administrative Justice issued guidelines on conflict of interest to public sector workers.

In 2010, the Economic and Organized Crimes Act was enacted to establish the Economic and Organized Crimes Office (EOCO). EOCO replaced the Serious Fraud Office and has additional powers to investigate and prosecute corruption cases. EOCO is tasked to monitor, investigate and prosecute offences involving money laundering, human trafficking, prohibited cyber activity, tax fraud, corruption and other matters.

The Criminal Offences Act 1960 (Act 29) provides for sanctions for corruption in general. Under the Criminal Offences Act, both demand and supply sides of corruption are criminal. The sentence on conviction for corruption under the Criminal and other Offences (Procedure) Act 1960 (Act 30) is a prison term not exceeding 25 years.

REGULATION OVERVIEW

Legal framework for oil regulation

Describe the key laws and regulations that make up the principal legal framework regulating oil and gas activities.

Oil activities are regulated by a number of laws and regulations. The Energy Commission Act 1997 (Act 541) established the Energy Commission, which has the mandate to grant licences for the transmission, wholesale supply, distribution and sale of electricity and natural gas, refining, storage, bulk distribution, marketing and sale of petroleum products.

The National Petroleum Authority Act 2005 (Act 691), established the National Petroleum Authority (NPA), which has been mandated to regulate, oversee and monitor activities in the petroleum downstream industry and to establish a unified petroleum price fund. It has the additional responsibility of granting licences for the supply, bulk storage, transportation and retailing of petroleum products.

The Petroleum Commission Act 2011 (Act 821), sets up the Petroleum Commission for the regulation and management of the utilisation of petroleum resources. This Act takes away the hitherto regulatory functions of the Ghana National Petroleum Corporation (GNPC). The Petroleum Commission is responsible for registering and issuing permits to firms active in the upstream petroleum industry. The Petroleum (Local Content and Local Participation) Regulations (Local Content Regulations) passed in 2013 regulates local content in the upstream sector. The Petroleum Commission (Fees and Charges) Regulations, 2015 (LI 2221) regulates granting of permits and licence fees.

The Ghana National Petroleum Corporation Act 1983 (PNDCL 64), established the GNPC, which is responsible for the development, production and disposal of petroleum.

The Petroleum (Exploration and Production) Act 2016 (Act 919) is the primary legislation for the regulation of exploration, development and production of oil and gas resources in Ghana. The object of the law is to provide for and ensure safe, secure, sustainable and efficient petroleum activities in order to achieve optimal long-term petroleum resource exploitation and utilisation for the benefit of Ghanaians. The Petroleum (Exploration and Production) (Health Safety and Environment) Regulations 2017 (LI 2258) provides the basic health and safety requirements to be complied with by parties involved in the upstream industry.

The Petroleum (Exploration and Production) (General) Regulations 2018 (LI 2359) provides the necessary processes involved in the exploration, development and production of oil and gas resources.

The Petroleum Revenue Management Act passed in 2011 addresses how petroleum revenues are collected, spent and invested. The Public Interest and Accountability Commission, established by the Petroleum Revenue Management Act, is mandated to oversee petroleum revenue management and allocation.

The Petroleum Revenue (Amendment) Act, passed in 2015, amends the Petroleum Revenue Management Act 2011, and provides for the allocation of funds to the Ghana Infrastructure Investment Fund for the purposes of infrastructure development, the provision of the composition of the Investment Advisory Committee and other related matters.

Expropriation of licensee interest

Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

Yes. Pursuant to section 21(7) of the Petroleum (Exploration and Production) Act 2016 (Act 919) (the Petroleum Exploration Law), if an oil company does not make a commercial discovery of petroleum within seven years of being

given an exploration licence, the petroleum agreement will terminate, irrespective of the duration stipulated in the agreement. The Petroleum Exploration Law provides, in the relevant part, that a petroleum agreement entered into in Ghana is valid for a total period of not more than 25 years.

However, where a discovery of petroleum is made in the last year of the exploration period, and an extension is necessary in order to enable a determination to be made on whether the discovery is a commercial discovery, or under exceptional situations, the Minister may, in consultation with the Petroleum Commission, extend the exploration period.

Under section 71(5) of the Petroleum Exploration Law, where there is war or any other emergency affecting energy supplies, the Minister of Energy may compel an oil company to sell all or part of the quantity of petroleum it produces to the Republic of Ghana or an agency of the republic. The Minister may also compel the oil company to sell a percentage of its entitlement to the country to meet its domestic market requirements. However, any compulsory sale would be done at prevailing market prices.

Revocation or amendment of licences

May the government revoke or amend a licensee's interest?

Generally, the licence would specify the conditions on which the government may revoke the licence. Further, the Minister of Energy, under the Petroleum Exploration law, has the power to postpone or suspend petroleum activities on a field, where the Minister believes such postponement or suspension is in the national or public interest.

On the occurrence of an accident or an emergency that leads to loss of life or personal injury, among others, the Minister may, acting on the advice of the Petroleum Commission, order that petroleum activities on the field be suspended to a certain extent or that the licensee may continue carrying out petroleum activities subject to the imposition of some conditions.

Also, where a natural resource is discovered in a contract area, the Minister may, acting in consultation with the relevant authorities and any affected person, order that petroleum activities in the area be postponed.

Regulators

Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The Ministry of Energy provides the overall policy direction in the management of the oil sector in particular. The Attorney General's Department, under the Ministry of Justice, is also responsible for drafting the required laws for regulating the oil sector.

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

The GNPC is the state oil company and it is responsible for the development, production and disposal of petroleum. The GNPC is not a regulatory or oversight body and may undertake development, production and disposal of petroleum alone or in a joint venture with a private contractor.

The Petroleum Commission reports to the Ministry of Energy and has an obligation to ensure that the contractor satisfies its obligations with respect to minimum expenditure and work programme requirements. Nevertheless, the GNPC is relied upon by the Petroleum Commission for the performance of the technical side of these regulatory functions.

Generally, breach of the legal requirements under the laws regulating the sector is criminal and the sanction for such a breach may only be imposed by a court of law after a person is convicted of the breach by the court. The sanctions that may be imposed by the court include fines and terms of imprisonment up to one year for each breach, or both. The Petroleum Commission also has the power to expunge the name of any person registered to conduct petroleum activities from the Petroleum Register, where the person fails to comply with local content requirements even after being notified by the Commission to remedy the breach. Also, the regulatory bodies have the power, in accordance with the law, to levy administrative fines for non-compliance with the law or the terms and conditions of a permit or licence.

Government statistics

What government body maintains oil production, export and import statistics?

With respect to upstream operations, the law establishing the GNPC makes it mandatory for international oil companies to maintain data relating to oil exploration and production. Also, the Petroleum Commission, under the Petroleum Commission Act, has the duty to receive and store petroleum data, manage a national petroleum repository and, at the request of the Minister, undertake reconnaissance exploration including data acquisition.

This data is deemed the intellectual property of the Ghanaian government and the international oil company cannot deal with this data without government consent.

In the downstream sector, the NPA has been mandated to regulate matters relating to export and import statistics. Petroleum marketing companies are required to submit data on import and export statistics to the NPA.

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Title

Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

Ownership of land in Ghana is generally vested in chiefs, families, the state and individuals. However, the system of landownership makes a conceptual distinction between surface rights and subsurface rights for the purposes of determining ownership of any minerals embedded in a given piece of land.

The right to minerals embedded in the subsurface is severed from the surface rights of persons who have an interest in land. The 1992 Constitution provides that every mineral (including petroleum) in its natural state within any land in Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of Ghana and shall be vested in the president on behalf of, and in trust for, the people of Ghana.

State ownership of petroleum resources is further emphasised in the Petroleum Exploration Law. Section 3 of the Law stipulates that all petroleum existing in its natural state within the jurisdiction of Ghana is the property of Ghana and is vested in the president on behalf of, and in trust for, the people of Ghana, subject to any right granted, conferred, acquired or recognised.

Subject to the payment of appropriate compensation, the state has the right to appropriate any given piece of land for the exploration and development of petroleum resources.

In brief, the legal regime for property rights is dual in nature. In one respect it enables individuals to enjoy the surface rights relating to a piece of land; at the same time, it vests in Ghana control over the mineral resources embedded in the subsurface.

The issue of title to the extracted oil is determined on a contractual basis. In most petroleum agreements, the title and risks in the extracted oil pass to the licensee, lessee or contractor at the point where the extracted oil passes through the outlet flange or the delivery point.

Exploration and production – general

What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

The Petroleum Exploration Law does not make a distinction between the licensing regime for undertaking either an offshore or onshore activity. Most of the petroleum activities are offshore and any person who intends to undertake a petroleum activity is required to enter into a petroleum agreement with the government. Under the Petroleum (Local Content and Local Participation) Regulations 2013 (the Local Content Law), indigenous Ghanaian companies are to be given first preference in the grant of a petroleum agreement or a licence with respect to petroleum exploration and production. Despite this provision, oil exploration and production are dominated by international oil companies.

Pursuant to the Local Content Law, contractors are required to source goods and services from Ghanaian companies unless the contractor can show that the quality of the Ghanaian goods required is lower than what is to be imported or that there is no Ghanaian company with the requisite technical skill.

Companies that are active in petroleum exploration, development and production in Ghana include Eni, Hess, Afren, Saltpond Offshore Production, Vitol, Gasop Oil, Oranto Petroleum, Vanco Ghana Limited, Lukoil, Kosmos, Tullow, Springfield and Anadarko. Also, Ghanaian companies such as Seaweld Engineering and Belmet Ghana are active in the provision of support services in the exploration, development and production of oil.

Oil exploration and production has been mainly offshore at the Jubilee Field located in an area straddling the West Cape Three Points and Deepwater Tano contract blocks. TEN Fields, also in the Deepwater Tano block, has produced its first oil, and export of gas from the field is expected to begin in 2017. Also, the Sankofa Gye Nyame Field produced its first oil in 2018, which is expected to help in sustainable production of electricity in Ghana. The GNPC is also currently undertaking exploration activities in the Voltain Basin to enhance knowledge of the basin and establish its prospectivity.

The legal regime regulating petroleum operations does not explicitly designate particular areas as off-limits for the purposes of oil exploration and production. However, petroleum operations can only be carried out in a particular area if the Minister for Petroleum so declares, and the operations are expected to conform to the environmental laws of the country and to international best practice for the protection of human and marine resources.

Exploration and production – rights

How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

The Ministry of Energy has the overall responsibility for providing policy direction for oil exploration and production. The government's participation in the regulation of the oil industry is undertaken through the Petroleum Commission.

Under the general supervision of the Ministry of Energy, the Petroleum Commission is responsible for managing the petroleum resources of Ghana. The law establishing the Petroleum Commission, in the main, spells out its organisational structure, objects and mode of operation.

The Petroleum Exploration Law provides the legal framework for establishing the contractual relationship between the state, the GNPC and prospective oil companies.

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Section 10 of the Petroleum Exploration Law provides that no person other than the GNPC shall engage in petroleum exploration, development and production except in accordance with the terms of a petroleum agreement between that person, the GNPC and the Republic of Ghana.

The Petroleum Exploration Law further provides that any person intending to engage in petroleum exploration and development shall participate in an open, transparent and public competitive bidding process initiated by the Minister for Petroleum. Direct negotiation will generally not be used in the first instance, unless that is the most efficient way of ensuring optimal exploration, development and production of the area. For instances of direct negotiation, the interested oil company must submit an application to the Minister for Petroleum.

In practice, the licensing procedure is coordinated by the GNPC and the Petroleum Commission, which has packaged Ghana's upstream oil potential into blocks. Interested investors apply to the Minister, who then refers the application to the GNPC and the Petroleum Commission for evaluation and due diligence.

The Petroleum Commission then issues a report that leads to negotiations, and a draft petroleum agreement is then sent for the approval of the cabinet and parliament. The licence is only granted after parliament ratifies the petroleum agreement in accordance with article 288 of the 1992 Constitution of Ghana.

The Petroleum Exploration Law provides the framework for the management of oil and gas exploration, development and production. It deals extensively with petroleum contracts, the rights and responsibilities of contractors, and compensation payable to those affected by activities in the petroleum subsector.

In addition, it provides the basic terms and conditions of every petroleum agreement negotiated and executed in Ghana and spells out the rights and obligations of each party to the agreement, as well as the sanctions that may be applied for any breach of obligations assumed under the petroleum agreement.

On the basis of the Petroleum Exploration Law, a standard petroleum contract, known as the model petroleum agreement (MPA), has been developed to provide the framework for negotiating the terms and conditions of a petroleum agreement among the parties to a petroleum agreement. The parties to a petroleum agreement are free to negotiate any terms provided that such terms do not violate the law. The only mandatory terms under the Petroleum Exploration Law for a petroleum agreement are that, the agreement must provide that the GNPC shall hold an initial participating carried interest of at least 15 per cent for exploration and development and shall have the option to acquire an additional participating interest.

The parties are made up of the GNPC, the government and the oil company. In addition to the mandatory terms, the petroleum agreement will embody the final terms and conditions to regulate the intended petroleum operations. The typical terms of a petroleum agreement, as set out in the MPA, include:

- the contract area (block) (the delineated area where petroleum operations may be carried out by the oil company (investor));
- the exploration period (the limit in terms of duration for the exploration operations);
- the work programme (the defined amount of work that the investor is expected to achieve in the contract area during the exploration period);
- the cost of work, that is, the agreed amount to be expended by the investor to carry out the work programme, during the exploration period; and
- sanctions, in the event of failure by the investor to achieve its work programme at the stipulated time.

The Petroleum Exploration Law provides an initial contractual period of 30 years, which is subject to renewal for all petroleum agreements between the state and oil companies.

Under the law, an oil company with a prospecting licence is required to make a commercial discovery within seven years, failing which it will be required to relinquish the contract area.

Apart from its licensing role, the Petroleum Commission together with the GNPC is further mandated to approve field

development plans and monitor the production cost and activities of the international companies.

Government participation

Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

Under section 10 of Ghana's Petroleum Exploration Law, the government has a statutory right to participate in an exploration or production licence. Section 10 of the Petroleum Exploration Law states clearly that, when a discovery of oil is declared to be commercial, the state, acting through the GNPC (the state oil company) shall have a carried interest of at least 15 per cent and the option to acquire additional participating interest in the discovery, depending on the terms of the petroleum agreement. This option to acquire additional right must, however, be exercised within a particular time frame and is a paying interest, with exception of cost incurred during exploration.

The oil companies and the government agree on the terms of the petroleum agreement through direct negotiations before an agreement is signed and ratified by the country's legislature.

Royalties and tax stabilisation

If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are any tax stabilisation measures in place?

The fiscal package consists of:

- royalties;
- carried interest;
- paying interest;
- additional oil entitlement;
- petroleum income tax; and
- annual surface rental.

There are also indirect tax obligations in the form of local content requirements, domestic supply obligations and decommissioning.

The Petroleum Law provides that the oil company (the investor) pays royalties on production, but no figure has been fixed. However, the MPA, which was prepared by, and is used by, the GNPC, and was approved by the government, However, the MPA, which was prepared by, and used by the GNPC, and was approved by government, has negotiable rates.

The main advantage of the royalty tax system is that the resource owner (ie, the state) can have its resources exploited and receive benefits without making any financial contribution.

In view of the fact that payment of royalties affects the profits of the operation, the industry practice has been to levy lower royalty rates on the riskier, more costly and deep-sea operations, and then levy a higher rate commensurate with the lower level of risk associated with the onshore and offshore shallow water operations.

Royalties are levied on gross production of oil and gas by the state irrespective of the profitability of operations. It can be taken in the form of oil or cash. The tax regime dealing with the petroleum sector also recognises the commercial

entitlement of investors; the companies that undertook the huge risks and expenses of exploration, development and now production of Ghana's Jubilee Field.

The fiscal aspect of the petroleum industry in Ghana makes no distinction between onshore and offshore production for purposes of determining the tax liabilities of international oil companies.

Other than tax and royalties, the only payments that will be required are licensing and registration fees payable to the Petroleum Commission.

Licence duration

What is the customary duration of oil leases, concessions or licences?

Section 14 of the Petroleum Exploration Law provides, in the relevant part, that a petroleum agreement shall be valid for a total period not exceeding 25 years. The Petroleum Exploration Law permits the term of a petroleum agreement to be extended or a new petroleum agreement entered into by the parties, subject to ratification by parliament.

The law is also flexible in terms of a review of petroleum agreements where significant changes occur in the circumstances prevailing at the time of entry into the agreement or the last review of agreement. An extension is therefore a possibility.

The Petroleum Exploration Law fixes the maximum period for petroleum exploration at seven years. This is normally divided into an initial three-year phase followed by two-year phases.

Depending on the size of the contract area, these phases can be negotiated. The contractor is required to relinquish part of its contract area after a period of seven years if it fails to make a discovery in commercial quantities.

Depending on the size of the contract area, the contractor will be required to relinquish 20 per cent of the contract area. For a smaller acreage, relinquishment may be between 10 and 15 per cent. The percentage of relinquishment is subject to negotiation.

Extent of offshore regulation

For offshore production, how far seaward does the regulatory regime extend?

In accordance with international law, the regulatory regime extends up to a maximum of 200 nautical miles from the baselines, from which the breadth of the territorial waters is measured.

It is reported that the extended legal continental shelf holds significant recoverable reserves of oil and gas for Ghana.

Onshore offshore regimes

Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

There is hardly any difference between the onshore and offshore regimes. They are both governed by the same laws and practices, and both regimes are expected to conform to international best practice.

Authorised E&P entities

Which entities may perform exploration and production activities? Describe any registration requirements. What criteria and procedures apply in selecting such entities?

The GNPC, in collaboration with oil companies, usually carries out exploration and production activities subject to petroleum agreements. The GNPC has carried out a preliminary evaluation of the oil and gas potential of Ghana's sediment basins and packaged the potential areas into blocks. These blocks are applied for by potential investors. An investor completes an application form and submits it to the Minister of Energy who then refers it to the GNPC and the Petroleum Commission.

The Petroleum Commission and the GNPC then carry out due diligence on the company that has applied for the block. In evaluating the application of an investor, the Petroleum Commission and the GNPC take cognisance of the financial capability of the investor, the technical track record of the investor, the proposed work programme, and budget and fiscal package proposed by the investor.

The work programme and the fiscal package are two of the critical areas for negotiations. Due diligence is also conducted on the investor company to ensure that it is duly incorporated as a corporate legal entity to conduct operations.

When this has been done, a comprehensive report, including the Petroleum Commission's recommendation and the GNPC recommendation, is submitted to the Minister of Energy. If the investor company qualifies in accordance with the set criteria, the Minister instructs the petroleum agreement negotiation team to negotiate with the investor.

Under the Petroleum Local Content Law, an investor who intends to enter into a petroleum agreement with the government or obtain a petroleum licence in order to explore, develop and produce oil and gas is required to incorporate a company in Ghana and grant an indigenous Ghanaian company at least 5 per cent equity participation. In practice, most investors register branch offices during the negotiation phase of the petroleum agreement and then incorporate the subsidiary companies before commencing petroleum operations in accordance with the law.

Regulatory powers over operators

What controls does the regulatory body have over operators? Can operatorship be revoked?

The Minister of Energy's control over operatorship is usually restricted to the appointment of an operator before execution of the petroleum agreement or change of an operator after the petroleum agreement has been executed, as set out in the four steps below:

- the Minister may appoint an operator for parties to a petroleum agreement. The parties to a petroleum agreement are required to agree on an operator before the petroleum agreement is executed. However, the Minister may appoint an operator for the parties if the parties cannot agree on an operator;
- where the parties to a petroleum agreement select an operator, the operator must be approved by the Minister before execution of the petroleum agreement;
- after execution of the petroleum agreement, the parties to the agreement may only change the operator with the approval of the Minister; and
- the Minister, in consultation with the Petroleum Commission, may change an operator if the operator ceases to meet material requirements under the law or the petroleum agreement.

Joint ventures

What is the legal regime for joint ventures?

There is no express provision for the regulation of joint ventures in the petroleum industry. Membership and operation of joint ventures are regulated by the standard rules of contract and other petroleum laws that are relevant to such joint ventures.

At present, the joint venture partners operating the Jubilee Field in Ghana comprise Tullow Ghana Limited (35.48 per cent), Kosmos Ghana HC (24.8 per cent), Anadarko WCTP Company (24.8 per cent), Petro SA (2.73 per cent), and the GNPC (13.64 per cent). The EO Group has since sold its 1.75 per cent stake to Tullow.

Also, the joint venture partners for TEN Fields are Tullow Ghana Limited (25 per cent), Kosmos Ghana HC (30.2 per cent), Anadarko (30.2 per cent), GNPC (12.5 per cent) and Petro SA (1.8 per cent).

Matters dealing with petroleum exploration and development are governed mainly by petroleum laws such as the Petroleum (Exploration and Production) Act 2016 (Act 919) and the Ghana National Petroleum Corporation Law (PNDC Law 64).

The fiscal aspects of petroleum operations are regulated by the Petroleum Income Tax Act 1987 (PNDC Law 188). It is submitted that joint venture agreements will generally be regulated by specific contract terms as well as the various statutory provisions.

At the moment, under the Petroleum (Local Content and Local Participation) Regulations, 2013 (LI 2204) (the Petroleum Local Content Law), all foreign companies who intend to provide goods or services in the upstream petroleum sector are required to incorporate a joint venture company with an indigenous Ghanaian company and afford that indigenous Ghanaian company at least 10 per cent equity participation. These joint ventures are required to register with the Petroleum Commission in order for them to legally engage in tenders or bids to provide goods or services to the contractors, licensees, subcontractors or the GNPC.

It is important to note that these joint ventures are different from the oil and gas exploration, development and production companies. These joint venture companies only provide goods and services to the oil and gas exploration, development and production companies who have entered into petroleum agreements with the government or hold petroleum licences.

Reservoir unitisation

How does reservoir unitisation apply to domestic and cross-border reservoirs?

Under the Petroleum Exploration Law, the Minister of Energy has the prerogative to determine that a petroleum field shall be developed as a single unit, where a petroleum field extends beyond the boundaries of an area covered by a petroleum agreement or other authority granted or recognised under the act.

Licensee liability

Is there any limit on a party's liability under a licence, contract or concession?

There is no limit on a party's liability. Liability for any damages can also be joint and several.

Guarantees and security deposits

Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

Yes. Parental guarantees and other forms of economic support may be sought by the Minister of Energy. According to the law, a licensee is required to provide the Minister with the performance bonds or guarantees that the Minister may require for the fulfilment of the obligations undertaken by the licensee and for possible liabilities arising out of the petroleum activities undertaken under the licence, petroleum agreement or petroleum subcontract. The nature of the guarantee or performance bond is usually dependent on the requirements of the Minister. Usually, the Minister would require a guarantee from the ultimate parent company.

In relation to the environment, the Petroleum Exploration Law provides, in the relevant part, that a contractor is required, at cessation of operations, to restore the affected areas and remove all causes of damage or danger to the environment. Under the Petroleum Exploration Law, a licensee is required to set up a decommissioning fund for funding of its decommissioning plan. 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 will negotiate the terms of the reclamation security agreement as well as the security deposit to be posted by the contractor.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services, capital or personnel?

The Petroleum (Local Content and Local Participation) Regulations 2013 (LI 2204) provides that oil companies operating in Ghana must, as far as practicable, use goods and services produced by or provided in Ghana for their operations.

Companies must retain the services of only indigenous Ghanaian companies in respect of insurance and reinsurance brokers, legal services, financial services and banking services, unless exempted from doing so in accordance with the regulations. The regulations define an 'indigenous Ghanaian company' as:

Also, Companies that operate in the sector are required to give qualified Ghanaians first consideration with respect to employment in the company. The Companies must also train the Ghanaians employed and ensure that Ghanaians who are employed in positions other than management and technical positions (such as engineers), constitute 80 per cent of its staff for such positions at the start of operations and 100 per cent of staff for such positions within 10 years of starting operations, among others.

Companies that fail to insure the insurable risks relating to petroleum activities in the country through an indigenous brokerage firm or reinsurance broker or obtain the written approval of the National Insurance Commission when seeking to obtain an insurance offshore service relating to a petroleum activity, retain only the services of a Ghanaian legal practitioner or a firm of Ghanaian legal practitioners or operate a bank account in Ghana with an indigenous Ghanaian Bank are liable:

- to pay to the commission an administrative penalty of 200,000 penalty units;
- in the case of a contractor, where the contravention continues after the time specified for remedying the contravention, the commission shall withhold the approvals and permits required by the contractor for the

conduct of petroleum activities until the time that the contravention is remedied; and

- in the case of a subcontractor, licensee or other allied entity, where the contravention continues after the one time specified for remedying the contravention, the commission shall expunge the name of the subcontractor, licensee or other allied entity from the Register of persons registered to undertake petroleum activities.

The purposes of the regulations are, inter alia, to achieve and maintain a degree of control for Ghanaians over development initiatives for local stakeholders. The Regulations will, therefore, be strictly applied to foreign investors and all other entities in the upstream petroleum industry.

Social programmes

Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

Under the old Petroleum Exploration Law, oil companies were encouraged to maintain a mutually beneficial relationship with the communities in which they conducted petroleum activities. The new Petroleum Exploration Law mandates the relevant regulatory bodies to play an active role in ensuring a mutually beneficial relationship.

Under the new Petroleum Exploration Law, legally binding obligations are placed on oil companies to have a positive impact on local communities by attaching sanctions to the obligations. Under section 64 of the Petroleum Exploration law, a local content fund is established and the funds are meant to be used for education and training for Ghanaian citizens as well as research and development of the Ghanaian petroleum industry. Also, the funds are required to be used to support small and medium-sized businesses in the industry by providing them with loans on a competitive basis. It is mandatory for contractors and sub-contractors to contribute to the fund.

The model petroleum agreement also requires contractors to contribute towards the establishment of training programmes to equip Ghanaians with the requisite technical and management skills for efficiently carrying out petroleum operations. Generally, this will be a term of any petroleum agreement entered into by the GNPC and the state.

Section 27 of the Petroleum Exploration Law also requires contractors to submit a detailed plan of development detailing plans of the oil company with respect to meeting, among others, its local content and health, safety and environmental obligations under the Petroleum Exploration Law, the Petroleum (Local Content and Local Participation) Regulations and the Environmental Protection Agency Act. The plan of development must be approved by the Minister before the oil company can even commence operations.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Yes. The Petroleum Exploration Law regulates the acquisition of the interests of a contractor in a petroleum contract entered into with the government. It 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 for Petroleum.

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

Approval for such a transfer must be sought by making a formal application to the Sector Minister, who may or may not approve such a transfer.

Approval to change operator

Is government consent required for a change of operator?

Yes. Under section 13 of the Petroleum Exploration Law, the operator is appointed by the Minister and can only be changed with the approval of the Minister upon a request by the GNPC or a contractor. The approval of the Minister is not to be unreasonably withheld.

Transfer fees

Are there any specific fees or taxes levied by the government on a transfer or change of control?

At present, the law does not explicitly prescribe any peculiar fees or taxes by the government on a transfer of change of control of petroleum rights. However, the usual transaction fees such as processing and registration of change of ownership accompanying such transactions would have to be made. The Minister may also impose conditions for assignment approval.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

Title to facilities and equipment used for oil exploration, development and transportation activities is initially vested in the contractor. However, in the course of the petroleum operations or by the end of the operations, title is transferred to the GNPC. Under section 19 of the Petroleum Exploration Law, title to the facilities and equipment is transferred to the GNPC once the oil company recovers the cost of such equipment or when the petroleum agreement terminates.

The GNPC may also elect to acquire title before all the cost is recovered by the oil company but only after the oil company has recovered at least 50 per cent of the cost. Here, title will only be transferred to the GNPC after it pays the oil company the unrecovered cost of the equipment and facilities.

The right of the GNPC to acquire title to the facilities and equipment purchased by the oil company also exists or applies where the equipment and facilities were financed by a lease. However, the oil company is not required to transfer title in the facilities and equipment to the GNPC where the equipment and facilities are of a type, which, by industry practice, are usually leased and are to be re-exported after use.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

With respect to decommissioning, the oil company is required to set up a decommissioning fund and submit a

decommissioning plan. Unless otherwise determined by the Minister, the decommissioning plan must be submitted not more than five years and not later than two years before the date on which the use of the petroleum facility to which the decommissioning plan relates is expected to permanently cease operation or the licence or the petroleum agreement to which the decommissioning plan relates will expire. The decommissioning plan must contain information and evaluations necessary for the Minister to make a decision relating to disposal of the petroleum facilities.

The Minister may approve the decommissioning plan and is required, upon approval, to set out a schedule for the implementation of the plan. Where the Minister disapproves the decommissioning plan, the Minister is required to notify the licensee or contractor in writing stating the reasons for the disapproval and request that certain conditions be satisfied by the contractor or licensee or a new or amended decommissioning plan be resubmitted to the Minister.

At a specified point in time of production, the oil company is required to contribute to the decommissioning fund and the funds are used to execute the approved decommissioning plan at the time indicated for decommissioning. The amount to be contributed to the fund will generally be calculated taking into consideration the cost of decommissioning, restoration of the site, and abandoning operations.

Under section 93 of the Petroleum Exploration Law, it is an offence to implement a plan of development without approval of the Minister and the offender will be liable, among others to pay US\$1 million for each day the implementation was carried on and may be liable to a term of imprisonment if the oil company fails to comply with the fines imposed by the Minister.

Security deposits for decommissioning

Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

According to the Petroleum Exploration Law, a licensee, contractor or subcontractor is required to provide the Minister with performance bonds or guarantees as the Minister may require for the fulfilment of the obligations undertaken by the licensee, contractor or subcontractor and for possible liabilities arising out of the petroleum activities undertaken under the licence, petroleum agreement or petroleum subcontract.

TRANSPORTATION

Regulation

How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

Regulation of downstream operations is a shared responsibility between the Energy Commission, the NPA and the Bulk Oil and Transportation company (BOST). The Energy Commission and the NPA have been established to play parallel roles in the allocation of licences for the transportation of crude oil and crude oil products.

Consequently, an individual or corporate entity that wishes to engage in a business or commercial activity in the downstream industry is required to obtain the required licences from both bodies.

The NPA also grants licences for the design, procurement, construction and operation of all facilities and infrastructure including refineries, process plants and petrochemical plants. A licence is also required from the NPA for the establishment, construction and maintenance of process plants and petroleum transportation.

BOST is charged with maintaining Ghana's strategic stock of petroleum products.

COST RECOVERY

Determining recoverable costs

Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

The Petroleum Exploration Law does not specify recoverable costs or a procedure for recovering any costs. However, under most production sharing contracts, the arrangement is for the contractor to recover operating costs (including development and production costs). These costs are determined in a budget which the operator presents to the joint management committee for approval.

Usually, the parties agree on how the costs are to be recovered. For instance, parties may agree for the contractor to pay upfront for the development costs. The contractor may then reimburse itself with an equivalent in crude oil liftings equivalent to the costs owed by the other parties. The formula for determining the value of the crude oil used to reimburse the contractor is determined by the agreement of the parties.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

The Petroleum (Exploration and Production) (Health Safety and Environment) Regulations 2017 (LI 2258) provides the basic health and safety requirements to be complied with by parties involved in the upstream industry. The purpose of these Regulations is:

- to prevent the adverse effect of petroleum activities on health, safety and the environment;
- to promote high standards for health, safety and the environment in carrying out a petroleum activity; and
- to contribute to the development and improvement of health safety and environmental standards.

The Petroleum Commission, the EPA, the GNPC, the Ghana Maritime Authority, the Security Services and other allied state institutions play strategic and interconnected roles for the sustainable exploitation of Ghana's emerging oil and gas industry.

The overriding objective of this inter-connectivity is to ensure that the petroleum resources are managed in a sustainable and environmentally friendly manner.

The principal government institution responsible for ensuring compliance with the environmental laws of Ghana is the EPA. As a condition precedent to the commencement of petroleum exploration and production, international oil companies are required to submit an environmental impact assessment to the EPA.

In its report, the international oil company is required to provide sufficient details about the proposed operations, its potential environmental impact and the proposed safeguards for mitigating its impact on the environment.

In addition, international oil companies carrying out petroleum operations are also obliged to ensure that they maintain at the worksite an establishment capable of dealing with fire, oil spills, blowouts, accidents or any other emergency situation is so as to prevent or control those situations and to minimise loss or damage from them.

In addition, a contractor or subcontractor carrying out petroleum operations is responsible for pollution or damage caused by or resulting from the operations as well as pollution or damage caused by or resulting from petroleum operations undertaken by an agent or employee of the contractor or subcontractor and shall take the necessary measures to remedy the pollution or damage caused.

An international oil company is also required to carry out petroleum operations in a safe manner in accordance with the best international practices prevailing in the petroleum industry in comparable circumstances.

In the event of default in respect of its environmental obligations, the GNPC will take steps to remedy the situation, and the company in default will be liable to reimburse the corporation of all costs and expenses incurred in that regard. Further, the EPA can revoke the environmental permit of a contractor to carry out petroleum activities or impose heavy fines over its breach of the environmental laws.

LABOUR

Local and foreign workers

Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The Ghanaian labour market is governed by:

- the 1992 Constitution;
- the Labour Act 2003 (Act 651); and
- the Workmen's Compensation Act 1987 (PNDC 187).

The various statutes regulating the oil industry also contain provisions dealing with labour issues.

In addition to the three above-mentioned regulations, the engagement of foreign labour is regulated by the Immigration Act 2000 (Act 573). Expatriate employees must possess valid visas endorsed with their names, before they may be permitted to enter Ghana.

International oil companies are prohibited from engaging in any discriminatory practice on grounds of race, nationality or sex in the conditions of service provided for personnel. There is a further legal obligation on international oil companies to ensure that Ghanaians working in the sector are equipped with the required skills and expertise in the various areas of petroleum exploration and production.

In 2013, the Ghanaian government passed the Petroleum (Local Content and Local Participation) Regulations 2013 (LI 2204), with the aim of achieving full local participation in all aspects of the oil and gas value chain. The Regulations impose an obligation on international oil companies to ensure that Ghanaians, who have the requisite expertise or qualifications in the various levels of the operations, are given first consideration with respect to employment. In addition, only Ghanaians are to assume the middle and junior-level positions.

At present, there is no training fund for the local workforce. However, where Ghanaians are not employed because of their lack of expertise, the international oil company must ensure that every reasonable effort is made to provide the training to the Ghanaians in that field, either locally or elsewhere. In addition, where a non-Ghanaian is employed in a position, the international oil companies must submit a succession plan to the Petroleum Commission.

In pursuance of this objective, international oil companies have an obligation to implement plans and programmes for training Ghanaian citizens in the various job classifications and within any other aspect of petroleum operations.

TAXATION

Tax regimes

What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

The Ghana Revenue Authority is the principal government body that wields tax authority. It administers the various tax laws in Ghana and works to ensure compliance by relevant entities, oil companies included.

An international oil company is required to pay taxes in accordance with the relevant laws. The tax regime for petroleum operations is governed by the Petroleum Income Tax Act (PNDC Law 188) and the new Income Tax Act 2015 (Act 896). They provide that income tax shall be assessed on gross income after deductions of outgoings and expenses wholly incurred in the petroleum operations, including the payment of royalties and rentals.

It is an option that is incorporated into a petroleum agreement to enhance the state's benefits, which are exercisable by the state within 60 days after the declaration of a commercial find.

The state is also entitled to additional oil entitlement (super normal profit tax), which is levied in the case of windfall profit. International oil companies are also liable to pay for surface rentals per square kilometre.

Taxes payable in respect of the transportation, marketing and distribution of petroleum products are not provided for under the regime for regulating petroleum operations. However, the Income Tax Act would be used to fill any gaps not covered by the Petroleum Income Tax Act.

In terms of corporate income and withholding taxes, oil companies are treated in the same way as all other companies are treated as prescribed in the tax laws, particularly the Income Tax Act.

At present, all companies engaged in petroleum operations are subject to a corporate income tax of 35 per cent on their chargeable income.

COMMODITY PRICE CONTROLS

Crude oil mining

Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Originally, the NPA had the mandate to set the prices for the sale of petroleum products in accordance with the prevailing international market rates. Currently, price-setting of crude oil products is under a price deregulation regime where the oil importers and dealers fix their own prices. The NPA still maintains an oversight responsibility over the prices of crude and refined products but does not interfere in how the prices are fixed by the oil importers.

COMPETITION

Competition enforcers

What government bodies have the authority to prevent or punish anticompetitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The present legal regime has made no express provisions for the regulation of anticompetitive behaviour in the

Oil Regulation

upstream sector of the petroleum industry. However, the NPA is authorised under the National Petroleum Authority Act 2005 (Act 691) to prevent and punish anticompetitive behaviour in the downstream sector of the industry.

The NPA enforces applicable conditions for stimulating competition, while concurrently discouraging monopolistic behaviour in the domestic retail market.

Further to its objective, the NPA's board takes the necessary measures in compliance with the Protection Against Unfair Competition Act 2000 (Act 589) to prevent the formation of cartels, monopolies and unfair competition in the petroleum downstream industry.

It also ensures the strict observance of fair and equitable practices and enforces existing contracts by monitoring the conduct of relationships among petroleum service providers.

The NPA's board is also given the power to formulate and establish a programme to promote new entrants as petroleum service providers in the petroleum downstream industry.

The NPA is also empowered to provide incentives for free zone developers and enterprises.

Obtaining clearance

What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

At present, there is no laid-down process for procuring a government determination for violation of competition laws. Where the proposed allegedly anticompetitive action is with regard to obligations under a petroleum agreement, any party that is likely to be affected by the proposed action may employ the dispute resolution mechanism set out under the petroleum agreement.

In addition, under the Protection Against Unfair Competition Act 2000 (Act 589), there are no penalties imposed for acts or practices of unfair competition. A person who believes an act or practice or a false or unjustifiable allegation during industrial or commercial activities, is likely to cause confusion, damage the person's goodwill or reputation, or mislead the public, may institute an action in a Ghanaian court for relief. The reliefs that a court may grant for acts or practices of unfair competition include an order of injunction to prevent the act or further acts, a provisional order to prevent unlawful acts or to preserve any relevant evidence and an award of damages as compensation. The court may also give any remedy which it considers fit on the facts of the case before it.

Note that the remedies granted in actions for unfair competition are civil and independent of the form of relief a victim of act of unfair competition may seek with regard to the infringement of intellectual property rights under:

- the Trade Marks Act 2004 (Act 664);
- the Copyright Act 2005 (Act 690); and
- the Patent Act 2003 (Act 657).

Generally, it is a crime to infringe on the intellectual property rights of another and a person who is convicted of such infringement may be liable to a fine or a term of imprisonment of up to three years.

DATA

Seismic data

Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

All data collected and information obtained by a licensee, a contractor or sub-contractor and the GNPC during petroleum activities, is the property of Ghana. This includes geological, geophysical, technical, financial and economic reports, studies, interpretation and analyses prepared by or on behalf of the licensee, contractor, subcontractor or the GNPC. The data and information may not be disclosed to a third party or exported outside Ghana without the prior approval of Petroleum Commission.

Persons who collect such data or hold such information are, however, permitted to use the data or information during the term of the licence or the petroleum agreement. The Petroleum Commission may also permit such persons to market the right to use the data or information subject to terms agreed between the Petroleum Commission and the relevant person.

INTERNATIONAL

Treaties

To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

International treaties and multilateral agreements do not automatically apply until they are ratified by the Ghanaian parliament. Ghana is a signatory to several conventions on climate change, biodiversity, land degradation and other environmental issues, including the Kyoto Protocol 1997.

Ghana is also a signatory to the United Nations Framework Convention for Climate Change 1992. Within the West African sub-region, the Economic Community of West African States, of which Ghana is a key member, is promoting regional energy cooperation and integration.

The exploration and production of petroleum is required to be conducted in conformity with these international obligations.

Also, section 59 of the Alternative Dispute Resolution Act 2010 (Act 798) (the ADR Act) recognises foreign arbitral awards and a foreign arbitral award is enforceable so far as it is valid, regular and still subsisting. Also, there should be no appeal pending with respect to the award under the law applicable to the arbitration. The ADR Act recognises the enforcement mechanism under the New York Convention.

Foreign ownership

Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence?

Any foreign company intending to carry out petroleum operations in Ghana is required to incorporate an entity under the Companies Act 1963 (Act 179).

The company is further required to maintain an office or establishment in Ghana to carry out petroleum operations and shall have in charge of the office a representative with full authority to act and to enter into binding commitments on behalf of the contractor.

The Petroleum Exploration Law regulates the acquisition of the interests of a contractor in a petroleum contract entered into with the government. It 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 of Energy.

The law further prohibits the contractor from transferring any share or shares in its incorporated company to an investor, either directly or indirectly, without the written consent of the Minister of Energy, if the effect of such a transfer

is to give the third party control of the company or to enable the third party to take over the interests of a shareholder who owns 5 per cent or more of the shares in such a company.

Where the merger or acquisition results in the creation of a new company, the petroleum agreement cannot be assigned to the new company without the consent of the Minister of Energy.

Cross-border sales

Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

Crude oil sales are regulated by the NPA. Under the National Petroleum Authority Act, petroleum marketing companies are required to submit monthly reports to the NPA.

The service company is required to provide details of:

- imports;
- production;
- domestic sales and consumption; and
- an inventory of crude oil and products and exports.

The rules for regulating crude oil and crude oil product sales within Ghana are the same in respect of cross-border sales or deliveries of crude oil products.

Under the Petroleum Exploration Law, the oil company may be required by the Minister of Energy to sell a portion of its crude oil product to Ghana to meet the country's domestic supply needs. Also, in the case of war or emergency affecting energy supply, the law empowers the Minister to compel the oil company to sell all or part of its crude oil entitlement to Ghana. Any such sale by the oil company is required to be at the prevailing market price.

UPDATE AND TRENDS

Current trends

What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

The Ghanaian government is increasingly leaning towards promoting local content in the petroleum industry. In March 2019, the cabinet approved a policy on local content and participation in the downstream petroleum industry. This policy is intended to ensure a Ghanaian-driven and Ghanaian-owned petroleum downstream industry capable of attracting increased local value-added investments.

In the last quarter of 2018, the Ghanaian government launched its first-ever oil and gas competitive licensing round bid evaluation and negotiation. This tendering process is aimed at ensuring transparency, value for money and getting companies with the requisite financial and technical expertise to exploit the country's oil and gas resource.