

Oil Regulation

In 28 jurisdictions worldwide

Contributing editor
Bob Palmer



2015

GETTING THE
DEAL THROUGH 

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Oil Regulation 2015

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General

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

The upstream petroleum industry in Ghana has been energised in recent years with the commercial discovery of the Jubilee Field in 2007. The Jubilee Field straddles the Deepwater Tano and West Cape Three Points licences some 70km offshore Ghana and 130km southwest of the port city Takoradi. The Field has estimated recoverable resources of up to 1 billion barrels.

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 relates 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 the bulk storage, transportation and retailing 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 other 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 with oil from the Jubilee Field. It is estimated that 1,000 cubic feet of gas will be produced with each barrel of oil. 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 100 million cubic feet 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, 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 at over 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 production of gas will be commenced on the basis of the findings of the Gas Development Taskforce.

2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

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 (gasoline), kerosene, LPG and natural gas for transportation and power generation.

Present consumption of petroleum products is in the region of 950,000 tons per annum. 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 even though there have recently been suggestions of nuclear power generation.

3 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 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.

In the formulation of policies and laws to regulate a specific sector such as petroleum operations, due regard has been 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, 1984 (PNDCL 84 (Petroleum Exploration Law)), the National Petroleum Authority Act, 2005 (Act 691), 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.

4 Is there an official, publicly available register for licences and licensees?

As part of its regulatory function, the Petroleum Commission keeps a record of all the upstream oil companies it registers. Entities that are registered with the Petroleum Commission can write to the Petroleum Commission requesting any information pertaining to the register. The information they seek may or may not be made available to them. The decision to release or not to release such information is currently under the total discretion of the Petroleum Commission. At present, no charges or fees have been developed and fixed for such inquiries.

5 Describe the general legal system in your country.

Ghana operates a legal system that is based on the common law system. Generally, the rule of law is upheld in Ghana. The 1992 Constitution of the Republic of Ghana has put in place a stable democratic institution 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 their 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 to create the perception of interference by the government.

The people of Ghana also generally obey the laws of Ghana and abide by court decisions. This has been 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) (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. The party seeking to enforce 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 international convention specified in the First Schedule to the Arbitration Act 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 corruption legislation in force in Ghana involves 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 combatting 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 (CHRAJ) 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). The EOCO replaced the Serious Fraud Office and has additional powers to investigate and prosecute corruption cases. Thus, the 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 for a conviction for corruption under the Criminal and other Offences (Procedure) Act, 1960 (Act 30) is a prison term not exceeding 25 years.

Regulation overview

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

Oil activities are regulated by a number of laws and regulations. The Energy Commission Act, 1997 (Act 541) establishes 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), establishes 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 (the 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 passed in 2013 regulates local content in the upstream sector.

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

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.

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

Yes. Pursuant to section 12(1) of the Petroleum (Exploration and Production) Act, 1984 (PNDCL 84) (the Petroleum Exploration Law), if an oil company does not make 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 30 years.

Further, 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. However, this would be done at prevailing market prices.

8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The Ministry of Energy provides the overall policy direction in the management of natural resources in general and 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. In enforcing this requirement, the EPA ensures that the exploration and development of oil is undertaken in an environmentally friendly manner.

The GNPC is responsible for the development, production and disposal of petroleum. The GNPC may undertake this responsibility alone or in a joint venture with a contractor.

The Petroleum Commission 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.

The NPA is also given a broad mandate to regulate, oversee and monitor activities in the petroleum downstream industry. In particular, it sets prices for petroleum products and supervises the bulk storage and transportation of petroleum products.

9 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.

The data so maintained is deemed as the intellectual property of the government and the international oil company cannot deal with such data without the consent of the government.

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.

Natural resources

10 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?

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 1 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.

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

Commercial production of oil from the Jubilee Field started in December 2010 and is currently reported as between 70,000 and 130,000 bbl/day.

In addition to ongoing development work on the Jubilee field by the Jubilee partners, Eni has announced that it is planning to proceed with the Sankofa Oil and Gas field development and Hess has also had exploration successes.

The companies which are active in the 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 and Anadarko.

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.

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 are expected to conform to the environmental laws of the country and to international best practice for the protection of human and marine resources.

12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

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.

Section 2 of the Petroleum Exploration Law provides that no person other than the GNPC shall engage in petroleum exploration, development and production without an agreement with the GNPC.

The Petroleum Exploration Law further provides that any person intending to engage in petroleum exploration and development shall submit an application to the Minister of Energy. This forms the basis of the licensing application in the industry.

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 sector.

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 (the MPA), has been developed to provide the framework for negotiating the terms and conditions of a petroleum agreement among the parties to a petroleum contract.

The parties are made up of the GNPC, the government and the oil company. The Petroleum Agreement embodies the final terms and conditions to regulate the intended petroleum operations. The typical areas covered by 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.

13 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 17 of Ghana's Petroleum Exploration Law, the government has a statutory right to participate in an exploration or production licence. Section 17 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 the option to acquire up to such percentage of the interest in the rights and obligations of such petroleum operations on such terms as may be agreed between the GNPC and the licensee in such petroleum agreement.

Even though no figure is fixed in the Law, the MPA that is prepared and used by the government has stipulated a negotiable rate of between 4 per cent and 12.5 per cent. 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. There is a proposed new law, which has fixed the free carried participating interest of GNPC at 15 per cent.

14 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 there 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, has stipulated a negotiable rate of between 10 per cent and 12.5 per cent for crude oil and 7.5 per cent for natural gas.

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.

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

Section 12(1) of the Petroleum Exploration Law provides, in the relevant part, that a petroleum agreement shall be valid for a total period not exceeding 30 years. The Law is 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 per cent and 15 per cent. The percentage of relinquishment is a subject of negotiation.

16 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.

17 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.

18 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 carries 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 takes 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.

19 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 (34.70 per cent), Kosmos Ghana HC (23.49 per cent), Anadarko WCTP Company (23.49 per cent), Sabre Oil and Gas (2.81 per cent), the EO Group (1.75 per cent) and the GNPC (13.75 per cent). EO Group has since sold its 1.75 per cent stake to Tullow.

Matters dealing with petroleum exploration and development are governed mainly by petroleum laws such as the Petroleum (Exploration and Production) Act 1984 (PNDC Law 84) 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.

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

Under the Petroleum (Exploration and Production) Act 1984 (PNDCL 84), 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.

21 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.

22 Are parental guarantees or other forms of economic support common practice? 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 Petroleum Commission during the registration of upstream oil companies.

Even though security deposits are not explicitly required, the entire permit application to the Petroleum Commission for a licence evaluates security risks.

Local content requirements

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

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 'a company incorporated under the Companies Act, 1963 (Act 179) that has at least 51 per cent of its equity owned by a citizen of Ghana and that has Ghanaian citizens holding at least 80 per cent of executive and senior management positions and 100 per cent of non-managerial and other positions'.

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 two hundred thousand 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.

24 Describe any local content requirements likely to apply to oil companies operating in your country.

The Petroleum (Local Content and Participation) Regulations provides that a non-Ghanaian company intending to provide goods and services in the petroleum industry shall incorporate a joint venture with an indigenous Ghanaian company. The indigenous Ghanaian company should have at least 10 per cent equity participation in the joint venture.

The Local Content Law further provides that there shall be a 5 per cent equity participation of an indigenous Ghanaian company in a foreign company that qualifies to enter into a petroleum agreement with the Government of Ghana.

Transfers to third parties

25 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 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 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 from the Sector Minister, who may or may not approve such a transfer.

26 Is government consent required for a change of operator?

Section 8 of the Petroleum Exploration Law states clearly that a petroleum agreement shall not directly or indirectly be assigned, in whole or in part, by the holder of the agreement to another person without the prior written consent of the Sector Minister.

27 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.

Decommissioning

28 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?

The Petroleum Exploration Law contains provisions that govern decommissioning. The Petroleum Exploration Law provides in relevant parts that a corporation or contractor shall, in accordance with regulations and best international techniques and practice, submit to the relevant authorities a development plan including a decommissioning plan in respect of any petroleum field to be developed directly by the corporation or by the contractor.

The Law also imposes an obligation on corporations or contractors to restore areas affected by their petroleum operations after they terminate those operations. They are also expected to remove any causes of damage or danger to the environment in accordance with regulations, and also carry out decommissioning in accordance with the approved development and decommissioning plan.

Corporations or contractors are expected to establish a decommissioning fund not later than 90 days after the approval of their development plan by the Sector Minister. The fund shall contain sufficient funds to cover decommissioning. The fund shall not be disbursed for any purpose that is not in connection with decommissioning.

The law does not distinguish between decommissioning and abandonment.

29 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 law, corporations or contractors are expected to establish a decommissioning fund not later than 90 days after the approval of their development plan by the Sector Minister. The fund shall contain sufficient funds to cover decommissioning. The fund shall not be disbursed for any purpose that is not in connection with decommissioning.

Transportation

30 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 a company charged with maintaining Ghana's strategic stock of petroleum products.

31 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

The Energy Commission Act 1997 (Act 541) provides that a person shall not, unless authorised to do so by a licence granted under the Act, engage in a business or commercial activity for refining, storage, bulk transportation, marketing or sale of petroleum products.

A licence under the Energy Commission Act may only be granted to a citizen, a body corporate registered under the Companies Act, 1963 (Act 179) or under the laws of Ghana, or a partnership registered under the incorporated Private Partnership Act 1962 (Act 152).

Similarly, section 12 of the National Petroleum Authority Act 2005 (Act 691), sets out the conditions precedent for the grant of a licence for the transportation of crude oil products.

One of the main requirements for securing a licence, particularly from the NPA, is that the person must be a citizen or a body corporate registered under the Companies Act or Incorporated Private Partnership Act of Ghana.

However, a foreign individual or a foreign company in a registered joint venture relationship with a citizen or a Ghanaian company can also be granted a licence.

The licences are granted upon the payment of the appropriate fees to either institution.

Health, safety and environment

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

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 object 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 situations 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.

33 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

The legal regime for the regulation of the oil industry has mandated some statutory bodies to enforce the health, safety and environmental aspects of oil production and consumption.

The EPA is authorised to enforce the relevant laws relating to the environment. As a precondition to the commencement of oil exploration and production, the international oil company is required to submit an environmental impact assessment to the EPA.

The NPA has overall responsibility for the standardisation and the quality assurance of oil and oil products for both local consumption and export. However, the establishment of specifications of fuel products is undertaken by the NPA in conjunction with the Ghana Standards Board.

The two statutory bodies also act jointly in specifying the allowable content of additives in each type of fuel and fuel-related product. The board of the NPA is required to monitor the refinery and manufacturing processes of petroleum products to ensure the application of clean and safe technology.

The National Petroleum Authority Act also requires petroleum service providers to submit monthly reports on a date specified by the board indicating details of actual imports, production, domestic sales and consumption, inventory of crude oil products and exports.

Unlike the Environmental Petroleum Agency, the law establishing the NPA has not attached any specific penalties to the non-compliance with the statutory requirements by oil marketing companies.

Labour

34 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The labour market of Ghana is governed by the 1992 Constitution, the Labour Act 2003 (Act 651) and the Workmen's Compensation Law 1987 (PNDCL 187). The various statutes regulating the oil industry also contain provisions dealing with labour issues.

In addition to the above-mentioned regulations, the engagement of foreign labour is regulated by the Immigration Act 2000 (Act 573). Expatriate employees are also required to pay income and withholding taxes.

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 government of Ghana 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 such 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

35 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 Internal Revenue Act, 2000 (Act 592). It provides 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 Internal Revenue 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 Internal Revenue Act, 2000 (Act 592).

At present, the corporate income tax paid by companies in downstream petroleum business is 25 per cent on profits made in a year.

Commodity price controls

36 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?

The NPA has oversight responsibility over the pricing of crude oil and refined products. It sets the prices for petroleum products in accordance with prevailing international market rates.

Competition, trade and merger control

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

The present legal regime has not made any express provisions for the regulation of anti-competitive behaviour in the upstream sector of the petroleum industry. However, the NPA is authorised under the

Update and trends

On 19 September, 2014, the government of Ghana gazetted and introduced the new Petroleum (Exploration and Production) Bill to parliament. According to the government of Ghana, the new Petroleum Law is to improve the existing legal framework.

The new Petroleum Law has provisions that deal with safety requirements, standards, emergency preparedness and safety zones.

Under the new Petroleum Law, contractors are required to comply with the provisions of the Environmental Protection Agency Act, 1994 (Act 490). The issue of decommissioning has been extensively provided for in the new Petroleum Law and participants in the petroleum industry will be strictly held liable for any pollution or damage resulting from their operations.

The new Petroleum Law also deals with the fiscal regime by introducing the collection of new fiscal elements such as bonus payment and providing for matters such as rate of royalty and annual acreage fees to be fixed in a subsidiary legislation and not left to be negotiated in a petroleum agreement.

National Petroleum Authority Act, 2005 (Act 691) to prevent and punish anti-competitive 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 board of the NPA 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 board of the NPA 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.

38 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

The present set of regulations and laws do not make any express provisions for appealing regulatory decisions of the government. However, the combined effect of articles 23 and 297 of the 1992 Constitution imposes an obligation on administrative agencies to act fairly in discharging their functions.

It is submitted that persons who are aggrieved by the decision of any administrative bodies are entitled to appeal such decision in the normal courts of Ghana.

International

39 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 signatory to several conventions on climate change, bio-diversity, land degradation and other environmental issues, including the Kyoto Protocol.

Ghana is also signatory to the United Nations Framework Convention for Climate Change. 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.

40 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 (eg, local subsidiary or branch)?

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.

41 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

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.



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