

GETTING THE DEAL THROUGH

Oil Regulation

in 33 jurisdictions worldwide

2014

Contributing editor: Bob Palmer



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Getting the Deal Through is delighted to publish the fully revised and updated eleventh edition of *Oil Regulation*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 33 jurisdictions featured. New jurisdictions this year include Croatia, Ecuador, Egypt, India, Indonesia and Morocco.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. *Getting the Deal Through* would also like to extend special thanks to contributing editor Bob Palmer of CMS Cameron McKenna for his invaluable assistance with this volume.

Getting the Deal Through

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Angola	3	France	68
António Vicente Marques AVM Advogados		Denis Borgia Borgia & Co	
Argentina	12	Ghana	74
Hugo C Martelli and Florencia Hardoy Martelli Abogados		Kimathi Kuenyehia Sr, Sefakor Kuenyehia, Kafui Baeta and Atsu Agbemabiase Kimathi & Partners, Corporate Attorneys	
Brazil	18	Greenland	83
Giovani Loss Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados		Per Hemmer, Johan Weihe and Rania Kassis Bech-Bruun	
Cameroon	28	India	92
Denis Borgia and Léon Ngako Djeukam Borgia & Co		Santosh Pandey Dhir & Dhir Associates	
Croatia	33	Indonesia	100
Miran Mačešić and Ivana Manovelo Mačešić & Partners		Fitriana Mahiddin and Syahdan Z Aziz SSEK	
Denmark	40	Iraq	107
Per Hemmer, Johan Weihe and Rania Kassis Bech-Bruun		Matthew Culver and Hadeel Hassan CMS Cameron McKenna LLP	
Ecuador	47	Italy	116
Ariel López Jumbo, Daniela Buraye and Paulette Toro López & Associates Law Firm		Pietro Cavasola and Matteo Ciminelli CMS Adonnino Ascoli & Cavasola Scamoni	
Egypt	54	Malaysia	125
Girgis Abd El-Shahid and Donia El-Mazghouny Shahid Law Firm		Faizah Jamaludin Skrine	
Faroe Islands	60	Mexico	132
Per Hemmer, Johan Weihe and Rania Kassis Bech-Bruun		Gabriel Ruiz Rocha Thompson & Knight LLP	
		Morocco	140
		Marc Veillot CMS Bureau Francis Lefebvre	

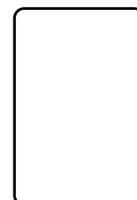


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CONTENTS

Mozambique	147	Norway	178	Tanzania	219
Taciana Peão Lopes, Paulo Ferreira, Márcio Paulo and Gisela Graça Couto, Graça & Associados		Yngve Bustnesli Kvale Advokatfirma DA		Mwanaidi Sinare Maajar and Tabitha Maro Rex Attorneys	
Myanmar	156	Oman	186	Thailand	225
Albert T Chandler Chandler & Thong-ek Law Offices Ltd		Mansoor J Malik and Mir Nasar Ahmad Al Busaidy Mansoor Jamal & Co		Albert T Chandler Chandler & Thong-ek Law Offices Ltd	
Namibia	162	Portugal	195	United Kingdom	232
Irvin David Titus and Hugo Meyer van den Berg Koep & Partners		João Nuno Barrocas and Ricardo Grilo Barrocas Advogados		Bob Palmer CMS Cameron McKenna LLP	
Nigeria	170	Qatar	202	United States	243
Soji Awogbade, Sina Sipasi and Elu Mbakwe ÆLEX		Sultan Al-Abdulla, Salman Mahmood and Hasan El Shafiey Sultan Al-Abdulla & Partners		Robert A James and Stella Pulman Pillsbury Winthrop Shaw Pittman LLP	
		South Africa	208	Venezuela	255
		Lizel Oberholzer Bowman Gilfillan Attorneys		Miguel Rivero and José Alberto Ramírez Hoet Pelaez Castillo & Duque	

Portugal

João Nuno Barrocas and Ricardo Grilo

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

Portugal is not an oil-producing country and in its history there has yet to be a commercially viable oil discovery or any significant production in its territory (onshore or offshore).

Indeed, despite research and exploration activities, no oil accumulation or reservoir with relevant commercial viability has been discovered, either in its onshore territory or in the offshore waters of its territorial sea and economic exclusive area.

The exploration works done so far were mostly done in shallow offshore and in onshore areas and reached their peak in the 1970s, with a drastic drop in activity in the 1980s and 1990s.

With a clear objective of making the legal framework more attractive, simpler and less cumbersome to private international oil companies possibly interested in investing in oil exploration in Portugal, legislation was enacted in 1994 for upstream activities (Decree-Law 109/94, the Petroleum Law), providing a new regulatory framework for upstream activity that is still in force at present.

The new legislation took some time to attract interest and it was only with advances in seismic and drilling technology in offshore and deep offshore waters that activity picked up again in the 21st century.

In 2007 a total of 12 concession areas for exploration and production were awarded, mostly in the offshore and deep offshore areas, adding to the existing onshore and shallow offshore concessions.

Since then, a number of 2D and 3D seismic expeditions in deep offshore areas have been undertaken but still no drilling has been done in these areas. Some minor drilling in onshore areas has taken place.

At present, the few companies (approximately six) that are active in the country are all private, both foreign and Portuguese-based.

In the midstream and downstream areas, the market is much more developed and mature with Portuguese and foreign-based operators involved in refining, distribution and marketing.

- 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?

According to the most recent data (for 2012), almost 50 per cent of Portugal's energy needs are covered by oil. Of 21.474 million tonnes of oil equivalent (toe), 9.293 million toe directly or indirectly derive from oil, which is particularly significant since Portugal is not an oil-producing country (ie, its energy needs are not covered domestically and thus naturally leads to a high level of energy dependence).

With regard to energy consumption, there is no great difference between the general patterns observed in Portugal and in other

European countries: industry and transport represent the bulk of total energy consumption.

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

Portugal has a specific piece of legislation that governs oil-related activities in the upstream phase (exploration, extraction and production of crude oil), namely the Petroleum Law.

However, since such activity is scarce, with projects not having proceeded further than the exploration phase and the industry not being well developed, the legislation is mostly broad and not very technical.

Possibly by virtue of the scarcity of activity, the technical aspects and standards thus far have not been regulated and are still to be dealt with by specific ministerial regulation.

The Energy and Minerals Directorate (the DGEG) is an administrative branch integrated into the Ministry of the Economy and is entrusted with supervising, promoting, oversight and to some extent regulating the energy, natural resources and minerals sector, in particular concerning oil, gas, mining, hydroelectric, renewables and biofuels.

Further, there is a general legal regime that sets forth the principles of the Portuguese petroleum system (Decree-Law 31/2006) and of the activities of storing, transportation, distribution, refining, marketing and organisation of crude oil and oil-refined products and markets.

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

The website of the DGEG (www.dgeg.pt) in the area of exploration and production of crude oil (www.dgeg.pt/dpep/pt/info_pt.htm) provides a list of the existing holders of licences and concession rights identifying the respective concession areas and blocks held. No fees are payable to access this information.

The DGEG keeps all files and registries concerning licences, licensees, concession contracts and concessionaires.

- 5** Describe the general legal system in your country.

Portuguese law is a system based on civil law. The rule of law is generally upheld and no problems or issues of special note exist as to the enforcement of property or contractual rights. Portugal is party to all the major international conventions regarding enforcement of judgments such as the New York Convention on recognition and enforcement of arbitral awards, the Washington Convention for Settlement of Disputes between States and Private Investors as well as, being a EU member state, the EU Brussels Regulation on recognition and enforcement of court judgments and jurisdiction.

Portuguese law on anti-corruption is aligned with the laws of EU Continental Europe, pursuant to the most recent EU directives on the subject.

Regulation overview

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

The key law in the legal framework regulating oil activities on the upstream stage is the Petroleum Act (Decree-Law 109/94 of 26 April), which is complemented by very few regulations and by the contractual discipline of concession agreements.

The Petroleum Law regulates the most important matters including, inter alia, types of grants of rights to explore and produce oil, rights and obligations of licensees and concessionaires, stages of the projects, working plans' obligations, terms, guaranties, procedures, reporting and filing obligations, relinquishment and restitution of areas, powers and rights of the state regarding the concession area, fees, taxes, royalties and tax regime and very few matters dealing with the technical aspects of the activities.

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

Only exceptionally, when the public interest so demands, may the state redeem and retrieve the concessions granted, provided that fair compensation is paid to the concessionaires.

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

There is no specific, independent or autonomous regulatory agency entrusted with oil regulation and there is no national state oil company with special or privileged rights of participation, regulation, exploration or production of oil.

The DGEG is an administrative branch integrated into the Ministry of the Economy and is entrusted with supervising, promoting, overseeing and to some extent regulating the energy, natural resources and geology sector, in particular concerning oil, gas, mining, hydroelectric, renewables and biofuels.

Regulation and supervision of certain areas in midstream and downstream activities is carried out by other bodies within the Ministry of the Economy.

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

The DGEG and the National Institute of Statistics are the entities that maintain oil production, export and import statistics.

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?

As per article 84 of the Portuguese Constitution and article 4 of the Petroleum Law, the mineral reservoirs and hydrocarbon accumulations found in the Portuguese subsoil are part of the public domain (the Portuguese state).

The inland surface rights can be private or public but the subsoil mineral reservoirs are public and are subject to expropriation and payment of adequate compensation when surface rights are private.

Pursuant to the Montego Bay Convention of 1982, of which Portugal is a party, and to Law 34/2006, Portugal is entitled to explore, on an exclusive basis, all subsoil, natural and economic

resources within its continental shelf up to 200 nautical miles off the coast of continental Portugal and insular Portugal (the islands of Madeira and the Azores), comprising its territorial waters (within 12 nautical miles) and its exclusive economic waters (from 12 to 200 nautical miles).

The Portuguese state is also entitled to authorise and regulate the awarding of rights to third parties to carry out exploration activities in those same areas. This is done by way of concessions whereby the state awards to the concessionaires (normally private parties), for a certain term, the right to explore and produce the oil.

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

At present, there are nine active concession areas in deep offshore and eight concession areas in shallow offshore and onshore.

There are areas in Portuguese waters reserved for defence and military purposes. There are also reserved and protected environmental areas, mostly inland.

All exploration and production works to be carried out offshore are subject to the jurisdiction and supervision of the DGEG on petroleum matters and of the Portuguese Maritime Authority (AMN), which concerns navigation traffic, safety, protection of natural resources, prevention of water pollution, access to and management of the sea waters under Portuguese jurisdiction and of the activities developed therein.

The AMN brings together several ministries and authorities in connection with the different types of economic and public activities that may be carried out in Portuguese waters (including fishing, defence, environment and water regulation).

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

The DGEG, integrated into the Ministry of the Economy, regulates oil exploration and production.

There are basically two types of instruments under which oil exploration rights can be granted. Licences of previous assessment only allow the holder to perform preliminary research and obtain geologic samples processing of the existing data, including the data stored in the archives of the DGEG. These licences are granted for a limited term of six months before any actual contractual rights of exploration and production are awarded.

Concession rights of exploration and production, on the other hand, are awarded by the state to concessionaires for a certain term (normally a total of approximately 30 to 35 years including the exploration phase), and include the right to research, explore and produce oil and, at the same time, the full financial, material and legal burden and risk of the exploration and production. Correspondingly, during the concession period, the concessionaires are entitled to own the oil extracted following commercially successful discoveries.

Not being an oil-producing country, there is naturally no production-sharing agreement regime in force in Portugal and no national oil company holding exclusive or special rights.

Licences of previous assessment may be granted by the state following formal requests addressed by private interested companies that demonstrate adequate technical and financial capability and disclose the objectives to be reached and the means to be applied.

The general rule is that the grant of concession rights of exploration and production must emerge from a procurement procedure under the form of an international public tender (international bid rounds) launched by the Portuguese state.

Exceptionally, concession rights to certain areas may be granted by way of direct negotiation, including areas declared as permanently available, areas that were subject to tender and were left

without any interested bidder, areas relinquished by former concessionaires and adjacent areas to existing concession areas where unitisation is justified.

The successful bidders must demonstrate the adequate technical, financial and legal capability to be awarded the contract and the award decision shall also be based on the quantity and regularity of the works programme proposed, as well as the financial participation (counterpart) offered to the state by the bidders.

The award of a concession contract is subject to payment of a fee for entering into the contract that may vary between €10,000 and €50,000.

The participation in a public tender or bid may require payment of deposits or performance bonds.

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?

No, such rights exist on the part of the government or state oil company as an operator or as a concessionaire.

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?

Royalties on production or extraction of crude oil are due at progressive rates and vary according to quantities and location of production.

For onshore production or production located in inland waters (eg, rivers), the royalties regime is:

- exemption from royalties up to an annual production of 300,000 tons;
- 6 per cent of anything above 300,000 tons up to 500,000 tons of annual production; and
- 9 per cent of anything above 500,000 tons.

For shallow offshore productions (water depths of up to 200 metres):

- exemption from royalties up to an annual production of 500,000 tons; and
- 10 per cent of anything above 500,000 tons.

At present, there is a full exemption from royalties for oil production in deep offshore waters (deeper than 200 metres) regardless of the quantity of oil produced.

Payment of an annual fixed rental fee whose calculation criteria is set forth in a ministerial decree based on the area in square kilometres held by the concessionaires is also due.

Depending on the location and the areas and blocks held, it is also common for concessionaires to agree with the state an additional financial participation (or compensation) to be paid in cash to the state.

This financial compensation is normally of a fixed annual amount during the exploration phase and during the production phase it is a cash value equivalent to a certain percentage of the oil produced, after deduction of the exploration, operational and development costs.

For offshore production, the rates are normally progressive between 2, 5 and 7 per cent, depending on the production quantities.

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

Concessions normally provide for eight years of exploration and another 25 years of development and production, which may be extended for an additional 15 years.

The duration of the exploration phase for deep offshore areas may exceed the eight-year term and normally does not exceed the 11-year term.

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

See question 10.

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?

In general, the structure of the legal regime is the same for onshore and offshore rights.

Where the regime varies between onshore, shallow offshore and deep offshore is in the different rates for calculation of royalties, the duration of exploration or production phases, minimum required drilling obligations and size of areas to be mandatorily relinquished by the concessionaires.

The legal regime for exploration and production of the different hydrocarbons is the same.

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

Any domestic or international company that demonstrates sufficient technical and financial capability and expertise may perform exploration and production activities, subject to being awarded such rights following the applicable procurement procedures.

Article 20 of the Petroleum Law requires that any foreign company granted exploration and production rights must at least register a branch office in Portugal, the required costs and timing of which are not significant.

19 What is the legal regime for joint ventures?

Portugal has legislation regulating consortia (Decree-Law 281/81), which are contractual joint ventures between companies.

It is possible to set up a consortium regulated by Portuguese law and, for example, having all operational matters governed by the AIPN model of Joint Operating Agreements between companies.

Normally the Portuguese state requires that when a concession is granted to more than one entity there be an external consortium formally set up under Portuguese law, even where the more internal and operational matters between operators and non-operators are regulated by the terms of a joint operating agreement or a joint development agreement.

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

Domestic unitisation is briefly regulated in article 46 of the Petroleum Law and basically provides the following:

- where the petroleum field extends beyond the concession area but does not reach another concession area, direct negotiation with the state is provided for;
- where the petroleum field extends beyond the concession area and reaches the area or areas of concessionaires, which are not adjacent to such field, a public tender process limited to the affected concessionaires shall be promoted and the area shall be integrated under the terms of the tender; and

- where the petroleum field comprises the concession areas of two or more adjacent areas, the production may be carried out by the concessionaires of the areas where the field extends to, if an agreement is reached between them. If there is no agreement, the government shall decide in favour of the area that is from a technical and economic viewpoint more efficient and shall redeem or rescind the other area against payment of fair compensation to such concessionaire.

There are no specific provisions in Portuguese internal laws regarding cross-border unitisation, and as such they should be dealt with under the umbrella of the international public international conventions of which Portugal and Spain are signatories.

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

This depends on the concession contract's terms and conditions but, normally, no such limitation is provided for under the law nor is any accepted by the state.

- 22** Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

The Petroleum Law (article 74) requires that concessionaires present annually a guarantee of performance of the concession agreements and security for liabilities under the form of an on-first-demand bank guarantee, a deposit in guarantee or an on-first-demand insurance policy of the amount equivalent to 50 per cent of the budgeted works for that year. Whether parental guarantees are required or not shall depend on the concession contract, but there is no specific requirement that these should be provided.

Additionally, the concession agreements normally require that concessionaires have sufficient and adequate insurance coverage with reputed national or international insurance companies for any liabilities that may emerge from the performance of the contractual works and activities.

Local content requirements

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

No such requirements exist in Portugal.

Transfers to third parties

- 24** 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 preemptive rights reserved for the government?

Pursuant to article 77 of the Petroleum law, all transfers of interest in a concession agreement to third parties require the government's consent. It is also common for the concession agreements to require such approval for all transfers of interest, including those among the members of a consortium who jointly hold the concession rights. Change of control in the concessionaire or in any company that is party to the consortium holding the concession rights also requires such consent.

The procedure requires that the concessionaire requests in a reasoned application and in writing beforehand the consent of the Minister of the Economy, addressing such a request to the DGEG and presenting any documents that may be required by the government.

It normally takes about 30 days for consent to be obtained and an additional 30 days for the execution of the relevant instruments

of assignment and adhesion, although it is not uncommon for these deadlines to not be met by the government.

Transfers of interest are normally subject to payment of a fixed fee that is established by ministerial decree, which varies depending on the contractual stage during which the transfer is made (the normal range is between €5,000 and €50,000).

- 25** Is government consent required for a change of operator?

It is normal for concession agreements to require the DGEG's consent for a change of operator.

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

See question 24.

Decommissioning

- 27** 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 abandonment of oil fields and the decommissioning of oil drilling sites (including the definitive termination of research and exploration activities) are very briefly regulated in the Petroleum Law (articles 47 and 48).

The decommissioning of drilling sites requires that a project be submitted for prior approval by the DGEG.

The abandonment of an oil field should be preceded by a request addressed by the concessionaire to the DGEG invoking technical or economic reasons for the lack of its viability, which must be decided by the Minister of the Economy based on the DGEG's grounded opinion. It becomes effective 60 days after the concessionaire is notified of a positive decision taken by the Minister.

Concession agreements normally provide for the joint and several liability of the joint-venture parties for all damages and other consequences caused to the state and third parties from the works performed, the installations and drilling sites created and its decommissioning.

Environmental law (under Decree-Law 147/2008) provide for strict civil liability of the joint venture parties carrying out the oil activities for all environmental damages caused by them, including those arising out of decommissioning. In certain circumstances, criminal liability may also be charged upon them.

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

Although not specifically set for decommissioning related liability, the performance guarantee required under article 74 of the Petroleum Law seeks also to cover any liability or damages caused to the state or any third parties from the oil activities, including decommissioning.

Transportation

- 29** 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?

Pursuant to the legislation setting out the principles of the Portuguese petroleum system (Decree-Law 31/2006), the free access to the activity of transportation of crude oil and crude oil products is ensured on the basis of transparency, impartiality and without discrimination,

provided there is compliance with the applicable national and international regulations.

Maritime and land transportation of crude oil and crude oil products is subject to licensing and is under the supervision of the Ministry of Economy.

The construction, installation and functioning of pipeline structures are also subject to licensing by the same ministry.

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

Entities interested in carrying out this activity must apply for a licence to the Ministry of the Economy (addressed to the DGEG) and must demonstrate compliance with several technical and financial requirements set forth in the existing regulations, as required by the DGEG.

Health, safety and environment

31 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?

Portuguese law is consistent with the requirements set for these fields in the rest of the EU, and most of its internal regulation on these matters derives from EU directives.

This is true of article 70 of the Petroleum Law (basic principles), Decree-Law 324/95, which was enacted in Portugal Directive No. 92/91/CEE regarding the minimum requirements for improving the safety and health protection of workers during drilling activities. It is also important to note Government Decree No. 197/96, which sets forth further health and safety requirements for extracting industries through drilling, in particular offshore installations and drilling zones.

Among other requirements on health and safety, the employer must ensure that workplaces are designed, constructed, equipped, commissioned, operated and maintained so that workers can perform their work without endangering their health and safety and those of others. Indeed, employers must keep an up-to-date health and safety record demonstrating that risks to workers' health and safety in the workplace have been determined and assessed, that adequate measures were taken to meet the requirements of the law and that the design, use and maintenance of the workplace and equipment are safe, and also that appropriate health surveillance was introduced and that each worker was entitled to health surveillance prior to and following the completion of duties.

As for environmental matters, there are several specific requirements that have to be met in order to ensure that the performance of the activity has a minimum impact on the environment. It is particularly relevant to point out that under article 71 of the Petroleum Law, prior to the commencement of the projects, the concessionaires must submit, for the approval of the DGEG, the preventive measures and safety plans (contingency plans) that will be launched in the event of an accident. Moreover, the concessionaires should adopt best practices for minimising the environmental impact, protecting the ecosystem and safeguarding the cultural art.

In this context, it is important to note the project of EU regulation on safety of offshore prospecting, exploration and production activities, which is currently under discussion and will likely strengthen even further the existing regulation, in order to prevent future Deepwater-style accidents.

As opposed to health and safety matters, where supervision is almost entirely developed by the Working Conditions Authority (ACT), environmental supervision may be developed by several different entities, although they predominantly fall within the umbrella of the National Environment Agency and thus of the Ministry of

Agriculture and Environment, always in coordination with the DGEG.

The infringement of applicable rules may trigger administrative offence procedures, which are promoted by the competent enforcement authorities. Depending on the level of seriousness of the infringement, the authorities may impose penalty fines and other accessory sanctions, including but not limited to the suspension of activity or performance of work at a given drilling site. Some infringements may even involve criminal liability.

32 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?

Health, safety and environmental requirements regarding the use of hazardous substances (including oil and oil products composition) are specifically established throughout various types of industry, and their origins are frequently connected with existing EU regulations, such as the REACH Regulation on registration, evaluation and authorisation and restriction of chemicals.

The supervising authorities are the same identified in the previous chapter, although it is important to underline the relevance of the National Authority for Hazardous Waste (ANR), whose intervention is particularly relevant since transporting operators of hazardous substances have to keep an updated electronic record of the traffic of said substances.

Operators are liable for the management of hazardous substances, which includes the costs connected with said management, and have to ensure due processing of the hazardous waste and a proper destination of the hazardous substances once they no longer can be used.

Finally, again, the infringement of applicable rules may trigger administrative offence procedures, which are promoted by the competent enforcement authorities. Depending on the level of seriousness of the infringement, the authorities may impose penalty fines and other accessory sanctions, including but not limited to the suspension of activity or performance of work at a given drilling site. Some infringements may even involve criminal liability.

Labour

33 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?

Although there are some relevant collective bargaining agreements applicable in the midstream and downstream areas of the oil industry, the Portuguese Labour Code is the most relevant piece of legislation applicable in the upstream, as there are no specific collective bargaining agreements applicable in this area.

Foreign labour rules may apply to the work performed in Portugal by employees of foreign companies, to the extent the work is performed under a secondment regime and provided that the minimum requirements of Portuguese law on certain aspects are met, such as prohibition of termination of employment contracts without fair cause, maximum working time periods, guaranteed minimum resting periods, holidays, health and safety, equality of treatment and non-discrimination, among other things.

The infringement of applicable rules may trigger administrative offence procedures, which are promoted by ACT. Depending on the level of seriousness of the misconduct, ACT may impose penalty fines and other accessory sanctions, including but not limited to the suspension of activity or performance of work at a given drilling site. In addition, from a strictly labour law point of view, there is

no minimum amount of local workforce that should be employed, nor there is any training fund for the workforce. However, having a significant amount of expatriate employees might be difficult to implement considering the existing restrictions on applying for a work visa, provided employer or employees, or both, are not EU residents.

Taxation

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

Aside from royalties on crude oil production (if and when applicable), concessionaires are taxed for the corporate income they individually generate at the general rates of tax law, as well as other general taxes of the Portuguese tax regime.

The investments made during the exploration phase should be accounted for as intangible assets that are amortisable if and once oil production begins.

An excise tax on energy and petroleum-derived products is levied on the production, transformation, refining and import of several types of fuel and petroleum-refined products and other origins of fuels and is payable at the moment of its consumer market introduction.

There are several different rates, exemptions and suspensions depending on quantities and types of products in question. There are also withholding taxes, namely, on payments of fees for services, royalties or interest to non residents.

Commodity price controls

35 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?

Crude oil and oil products are not subject to mandatory price-setting as Portugal has a free market framework.

Competition, trade and merger control

36 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?

In accordance with Law 19/2012 of 8 May 2012 (the Competition Law) the Portuguese Competition Authority (PCA), a statutory body independent from the Portuguese government, is the body responsible for the enforcement of competition law in Portugal and, therefore, for preventing and punishing any anti-competitive or abusive practices in the oil sector in Portugal. As far as the oil sector is

Update and trends

There are no specific proposals to change the petroleum legal framework, although it may be affected by the procedures for award of concessions, works programmes and conflicts of rights of different economic activities by the expected entry into force of an Act on the Principles of the Regulation of Portuguese Maritime Areas and also by the enactment of the EC Regulation on the Safety of Offshore Prospection, Exploration and Production Activities (presently under discussion).

Activity remains stable without many new developments.

Portugal has a very large offshore area in the North Atlantic under its control, when compared to the size of its continental territory. Given the new technologic horizons of the industry, the potential is there and is still largely unexplored. Still, a commercially viable discovery is needed in order to foster more interest in oil activities.

concerned, there are no sector regulators with concurrent competition powers in Portugal.

Besides the PCA, there is also a specialist competition court, the Competition, Regulation and Supervision Tribunal, which hears appeals against PCA decisions as well as decisions from other regulatory bodies. Decisions of the Competition, Regulation and Supervision Tribunal are subject to appeal to the higher courts

37 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?

Other than in relation to merger control, it is not possible to obtain a determination from the PCA on whether or not a proposed action or agreement is compatible with Portuguese competition law. Companies are responsible for their own assessment on the compatibility of their activities with competition law, which may in any event be challenged by the PCA or by the courts. Agreements that infringe the statutory prohibition on restrictive agreements provided in article 9 of the Competition Law will be deemed null and void, unless they meet the criteria laid out in article 10 of the same Act or in relevant EU block regulations, in which case they will be legally enforceable.

A concentration meeting the jurisdictional thresholds is subject to mandatory notification under the Portuguese merger control regime, and cannot be implemented before a clearance decision is issued by the PCA. Following the entry into force of the Competition Act, transactions are notifiable to the PCA if in the previous financial year, the combined Portuguese turnover of the parties to the transaction exceeded €100 million (net of directly related taxes) and at least two of the parties had an individual Portuguese turnover exceeding

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€5 million; or the transaction leads to the acquisition, creation or reinforcement of a market share of 50 per cent or more on the relevant national market; or the transaction leads to the acquisition, creation or reinforcement of a market share of 30 to 50 per cent on the national market and at least two of the parties achieved individually a Portuguese turnover of at least €5 million (net of directly related taxes) in the previous financial year;

The Portuguese merger control regime in the Competition Act is a two-phase process, encompassing an initial investigation (phase 1), which may last up to 30 working days from the date the notification becomes effective, and an in-depth investigation, if the PCA considers the transaction raises serious doubts as to its compatibility with competition rules, which may last up to 90 working days from the date of the notification.

International

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

Portugal is subject to EU Directives, such as those on oil rights, public procurement and environmental matters, and is a party to international conventions on the definition of sovereignty rights

over waters, continental shelf and their natural resources, such as the United Nations Convention on the Law of the Sea. It is also a party to the OSPAR Convention on Prevention and Elimination of Pollution from Offshore Installations.

Other than that, the regulatory policy and activity is not affected by international treaties or other multinational agreements.

39 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)?

Apart from the obligation that foreign companies that hold concessions have of registering a branch as a minimum requirement, the requirements are the same for domestic and foreign companies and are the ones a company must meet in order to be awarded a concession, to invest or hold oil related rights.

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

Except for tax matters, there are no special cross-border regulations on this subject.

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