Offshore Oil and Gas Programs

Australia • Brazil • People's Republic of China
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AUSTRALIA

OFFSHORE OIL AND GAS PROGRAMS

Rights to all offshore oil and gas are held by the government of Australia, which licenses exploration and development of specific sea floor areas to private companies. Foreign firms are welcomed and subject to the same regulation as domestic firms. The Foreign Investment Review Board may veto acquisition of controlling interests in domestic firms if it regards such foreign investment as not in the national interest.

Offshore Production

Most of Australia's gas and oil fields are offshore. There are some gas fields in the Bass Strait, which separates the island of Tasmania from the mainland state of Victoria, but the major fields lie off the northwest coast. The area between the Northern Territory and newly-independent East Timor contains proven gas fields and a high probability of further discoveries of gas or oil in commercially significant quantities. On March 25, 2003, the ExxonMobil company announced the biggest gas discovery in the history of exploration in Australia. The Jansz field, some 200 kilometers off the coast of Western Australia in ocean waters 1350 meters deep, was described as a "world-class find." It is estimated to contain some 20 trillion cubic feet (TcF) of gas, equivalent to 20 years of Australia's current gas production.[1]

Legislative Framework

In practice, Australia has a single legislative framework for offshore oil and gas, although formally it consists of seven state and territory regimes and one Commonwealth (federal) system.[2] In constitutional terms, the Commonwealth controls all offshore mineral resources, but decided in the late 1970s to award title to and governance of all petroleum deposits in the zone between the shore and the 3-nautical mile line to the states and the Northern Territory. The zone between the 3-mile limit and either the edge of the continental shelf or a line 200 nautical miles from the coast is controlled by the Commonwealth.[3]

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[1] *Oil Giant Hits Gas Bonanza*, THE AUSTRALIAN, Mar. 25, 2003 at http://www.theaustralian.news.com.au/.

[2] The leasing and regulatory system is summarized in THE LAWS OF AUSTRALIA (Sydney, Lawbook Co., 1998) Title 14, Environment and Natural Resources, Subtitle 14.13, Petroleum, Chapter 4, Offshore Petroleum Operations.

[3] Four Commonwealth laws define the offshore zones. Coastal Waters (State Powers) Act 1980, No. 75; and Costal Waters (Northern Territory Powers) Act 1980, No. 76; Coastal Waters (State Title) Act 1980, No. 77; and Costal Waters (Northern Territory Title) Act 1980. No. 78, at http://scaleplus.law.gov.au/.

The major Commonwealth legislation consists of the Petroleum (Submerged Lands) Act 1967 and the associated Petroleum (Submerged Lands) Registration Fees Act 1967 and the Petroleum (Submerged Lands) Royalty Act 1967. These laws were enacted again as state and territory legislation, in a process referred to as "mirror legislation." All offshore petroleum exploration and development, whether in the 3-mile zone controlled by the states and the Northern Territory or in the extensive continental shelf zone controlled by the Commonwealth, thus takes place under exactly the same legal regime.[4]

The legislation provides for petroleum titles to be granted to persons (which here means corporations) who wish to explore for or to extract oil or gas.[5] The earth's surface is divided into blocks, each 5 minutes of latitude by 5 minutes of longitude. These are controlled by the Commonwealth or State or Territory Authority, which decides which blocks are to be made available for exploration. The Authority then invites applications for exploration permits. The Authority may use cash bidding to select the company to which the exploration permit will be issued.[6]

The Act, applying to offshore extraction the same system devised earlier for onshore extraction, defines a set of "titles," referred to variously as permits, leases, and licenses. These consist of:

- Exploration Permits
- Retention Leases, which permit a company to retain rights to an area which is not yet commercially viable
- Production Licenses
- Pipeline Licenses

The Authority has the power to set, vary, suspend, or grant exemptions from conditions attached to the grant of any title. Titles are registered and, subject to conditions and the approval of the Authority, may be transferred to other companies. The Act, in section 59, provides for joint ventures by companies that have production licenses for different areas of a common gas or oil deposit.[7]

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[4] A complete list of, and links to, all Commonwealth, State and Territory legislation and administrative guidelines relevant to offshore petroleum extraction is available through the Commonwealth government's Department of Industry, Tourism and Resources at http://www.industry.gov.au/.

[5] Petroleum (Submerged Lands) Act 1967, No. 118, as amended. (Reprinted on Apr. 30, 2002 (with amendments up to Act No. 169, 2001), Canberra, Office of Legislative Drafting, Attorney-General's Department). A continually updated electronic version is available from the Attorney-General's Department ScalePlus database at http://scaleplus.law.gov.au/.

[6] *Id.* §§ 14-38.

[7] A brief summary of these titles is available from the Department of Industry's Overview for Investors website at http://www.industry.gov.au/acreagereleases/Overview/red_section15.htm.

Eligibility for Titles

Australia welcomes foreign capital and foreign corporations, and much offshore production is in fact carried by such major multinational corporations as ExxonMobil, ChevronTexaco, BP, and Royal Dutch/Shell. The Australian government's Department of Industry, which determines which blocks will be made available for exploration each year, actively markets exploration permits to foreign corporations. In May and June of 2001, a delegation of geoscientists and staff of the Department held seminars in Tokyo, Houston, Denver, and Calgary to provide detailed information on exploration opportunities.[8]

Under the Australian government's foreign investment guidelines, foreign companies are not required to seek government approval for an exploration permit. Proposals to acquire an interest in an existing petroleum exploration project or to establish a joint venture are exempt from examination under the Foreign Acquisitions and Takeovers Act 1975. Foreign companies, defined as companies with an aggregate 40 percent or more foreign ownership or where one foreign corporation or person has a 15 percent or higher share, are required to notify the Foreign Investment Review Board of proposals to participate in new petroleum development activities where the total investment is A$10 million or more. Investments in new businesses valued at between A$10 and A$100 million are usually approved without detailed examination. Proposals over A$100 million are normally approved unless considered contrary to the national interest. The same principles apply to acquisition of shares of 15 percent or more in companies engaged in petroleum extraction.[9]

In April 2001, the Foreign Investment Review Board blocked Royal Dutch/Shell's hostile takeover of the Australian Woodside Petroleum Ltd., of whose shares it owned 34 percent. Australian Treasurer Peter Costello said that foreign ownership of the nation's largest energy company would be contrary to the national interest.[10]

Conditions and Restrictions Imposed on Title-Holders

The government, which has rights to all petroleum, sets the conditions under which private companies explore and develop oil and gas resources. Each type of title comes with its own conditions and restrictions. Foreign and domestic companies are subject to the same terms. All titles are initially valid only for a set period and may be extended or renewed under certain conditions. Article 53A of the Act provides

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[8] *Australian Petroleum News*, April 2001, available through http://www.industry.gov.au/.

[9] *Foreign Investment Guidelines*, in Department of Industry, OVERVIEW FOR INVESTORS at http://www.industry.gov.au/acreagereleases/Overview/red_section8,htm.

[10] *Australia Rejects a Shell Takeover Bid*, THE NEW YORK TIMES, Apr. 23, 2001; *Shell's Not Out for the Count,* SYDNEY MORNING HERALD, Apr. 25, 2001, at http://www.smh.com.au/.

that if no operations have been carried on under a production license for at least 5 years, the license may be terminated.

The primary conditions, for all title types, include payment of fees, royalties, and excise tax, and conformity with environmental and health and safety regulations. All titles impose responsibility for extensive record keeping and cooperation with government inspection and oversight. Thus, available from the Internet site of Department of Industry is the Petroleum (Submerged Lands) Acts Schedule *Specific Requirements As To Offshore Petroleum Exploration and Production.*[11] This November 1999 electronic consolidation is not available in a print form, but runs to 165 pages as a pdf file. It details such matters as codes, standards, and specifications, and deals with general safety, construction of offshore platforms, conduct of drilling operations, gases used by divers, and types of cranes, winches, and lifts, in a most comprehensive manner.

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[11] At http://www.isr.gov.au/resources/petr_legislation/directions.pdf.

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BRAZIL

OFFSHORE OIL AND GAS PROGRAMS

According to Brazil's National Constitution[1] and Oil Law,[2] the Federal government has a monopoly on the exploration and exploitation of oil and natural gas reserves and other fluid hydrocarbons found in the territory of Brazil, including those found in the land-mass, territorial waters, continental shelf, and exclusive economic zone.[3] The prospect and exploitation of mineral resources may take place solely under the authorization or concession of the Federal government in light of national interest.[4]

Under the Oil Law, the Federal government may allow state-owned or private companies incorporated under Brazilian Law with headquarters and management in the country to engage in exploration and production of oil and natural gas in the country, pursuant to concession agreements subsequent to an invitation to bid.[5]

The Brazilian government's National Petroleum Agency (ANP) executes concession agreements with the concessionaire for exploration, development, and production activities involving oil and natural gas in blocks which fulfill the requirements of the Oil Law[6] and performs the full and permanent monitoring of such activities to ensure the Federal government heritage in light of national interest.

The concession contract for exploration and production of petroleum or natural gas may be assigned only to companies that meet the technical, economic, and legal requirements established by the ANP.[7] Each concession contract includes specific requirements that must be fulfilled by the operating company. This is to ensure that in addition to its technical capacity, the company has financial participation in the operation.[8] Regarding formal company requirements, when a foreign company is bidding, the standard company documents need to be translated, notarized, and validated in the

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[1] CONSTITUCAO DA REPUBLICA DO BRASIL (CN), Senado Federal, Brasilia, 2002, art. 177.

[2] LAW 9478, Oil Law, of Aug. 8, 1997, in DIARIO OFICIAL (DO) Aug. 7, 1997, art. 4.

[3] CN, art. 176 and Oil Law, art. 3.

[4] CN, art. 176, ¶ 1.

[5] CN, art. 177, ¶ 1 and Oil Law, arts. 5 and 23.

[6] Oil Law, arts. 23 and 24.

[7] Oil Law, art. 25.

[8] M.A. Costa Menezetto, COMENTARIOS A LEI DO PETROLEO, Editora Atlas, Sao Paulo, 2000, at 112.

corresponding consulate.[9]

The regulation governing the procedures for the bidding issued by the ANP[10] provides that a Special Commission on Bidding (*Comissao Especial de Licitacao)* will conduct the bidding process.[11] Only those companies that have been declared as qualified, *i.e.*, have met the technical, economic/financial, and legal qualifications,[12] may compete in the bidding.

Technical qualification of the companies will be based on their respective demonstrated experience in oil and gas exploration and production activities as follows:

- level of oil equivalent production
- onshore exploration and production operations
- offshore exploration and production operations
- exploration and production operations in deep and ultra-deep waters
- exploration and operations in adverse (hostile or difficult) environments
- experience with operations in environmentally sensitive areas
- overall experience in international operations[13]

Financial qualifications for interested companies require them to provide the following documentation:

- consolidated financial statements for the applicant company, audited by an independent auditor and complete with accompanying notes for the last 3 years
- the applicant company's present and historical credit rating from Standard & Poors Rating Services and/or Moody's Investor Services ratings, if available, or lines of credit, credit agreements, and any other bank reference
- description of long-term debt, including major lease obligations, and identification of major assets that are the subject of financial security arrangements
- description of any material contingent liabilities or obligations not reflected on the company's Balance Sheet and accompanying notes which may impact the future

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[9] *Id.*

[10] PORTARIA NO. 174 of ANP, of Oct. 25, 1999, in D.O. Oct. 25, 1999.

[11] *Id.* art. 2.

[12] *Id.* art. 7.

[13] *Id.* art. 14.

activities of the company

- details of medium-term plans, if these are expected to materially alter the financial status of the company
- accountant's assessment of the financial statements of the company, evidencing its financial competence and tax compliance
- letters of credit, when required in the bidding offering, issued by good graded banks according to such notice
- evidence of liquid assets above the required by the bidding offering[14]

Legal qualification requires:

- submission of a notarized complete copy of the articles of incorporation and bylaws of the applicant company registered with the Companies Public Registry (or equivalent competent body) in the place of incorporation
- indication of the shareholder who directly or indirectly holds more than 20 percent or more of the company's ownership or shares with the right to vote or who might in any way hold the control of the company
- appointment of a legal representative before the ANP with legal capacity to make corporate decisions on behalf of the company
- an express declaration by the Company's accredited representative that there are no pending litigation, legal proceedings, or other circumstances which may lead to the failure or bankruptcy of the company

A participant company from another country, in addition to the above mentioned documents, must present: proof that the company is legally constituted, organized, and functions according to the laws of its home country; and an undertaking that, in the event the company is successful in the bidding, it will constitute a company with its headquarters and management in Brazil according to Brazilian Law.[15]

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[14] *Id.* art. 21

[15] *Id.* art. 17.

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PEOPLE'S REPUBLIC OF CHINA

OFFSHORE OIL AND GAS PROGRAMS

At present, the People's Republic of China does not engage in offshore oil and gas leasing programs and lacks specific regulations on the subject. Participation by foreign firms in the PRC's offshore oilfield services is limited to exploration and development activities in government-approved blocks and in partnership with Chinese companies. The Chinese partner, as stipulated by law, is the China National Offshore Oil Corporation.[1]

Offshore oil and gas exploitation within the territory of the People's Republic of China (PRC) is governed chiefly by the Mineral Resources Law[2] and the Regulations of the PRC on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises.[3] The PRC does not have laws or regulations governing leasing of offshore oil and gas.

Cooperative Exploitation

Development of offshore petroleum resources in China is still conducted in the form of "cooperative exploitation." The Regulations stipulate that, on the premise of safeguarding national sovereignty and economic interests, foreign enterprises are permitted "to participate in the cooperative exploitation of offshore petroleum resources" of the PRC (art. 1). Cooperative exploitation is to be conducted mainly through international bidding and signing of petroleum contracts, in areas demarcated for cooperation in zones and surface areas designated by the relevant State Council ministry or department (*i.e.*, the Ministry of Land and Resources and its subordinate units) (arts. 5 and 7). According to the Law, the state implements a unified district-block registration and management system for the exploration of mineral resources (art. 12). Overall responsibility for cooperative exploration work lies with the China National Offshore Oil Corporation (CNOOC), a state-owned legal person with exclusive

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[1] See WTO and China's Petroleum & Petrochemical Industry, *CHINA COMMERCIAL BRIEF*, *http://www.usembassy-china.org.cn/ english/commercial/english/highlights/2.html*

[2] The Law was adopted on Mar. 19, 1986, and amended on Aug. 29, 1996, in accordance with the "Decision on Amending the PRC Mineral Resources Law." For the Chinese text of the amended Law, *see* 26 ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO (Gazette of the State Council of the PRC, hereafter STATE COUNCIL GAZETTE) 1024-1032 (Sept. 18, 1996); for an unofficial English translation, *see* Foreign Broadcast Information Service (FBIS) online subscription database, Document ID FTS19960830000099, or ASIA & AUSTRALASIA: BASIC OIL LAWS & CONCESSION CONTRACTS (Supplement 153) 16-23 (n.d.).

[3] Promulgated on Jan. 30, 1982, and amended in accordance with a Decision of the State Council on Sept. 23, 2001. For the Chinese text, *see* 32 STATE COUNCIL GAZETTE 17-19 (Nov. 20, 2001); for an English translation, see FBIS, Document ID CPP20011010000213.

rights to exploration, exploitation, production, and sales of all offshore oil resources within the regions specified for joint venture (Regs., art. 6, paras. 1and 2).

Contractual Arrangements

In terms of contractual obligations, the Regulations state that the foreign enterprise (foreign contractor) is to provide the investment to carry out exploration, be responsible for operations, and bear all the risk. Once a commercially viable oil (gas) field is discovered, both the foreign contractor and CNOOC will provide the investment for its cooperative development. The former will be responsible for development operations and production operations until CNOOC takes over production, based on the terms of the contract. The foreign contractor may recover its investment and expenses and receive remuneration from the petroleum produced (art. 8). The foreign contractor is permitted to export the petroleum that it is due and the petroleum that it purchases and may also remit abroad the investment it recovers, profits, and other legitimate income (art. 9). In carrying out the contract, the foreign enterprise also has reporting and record-keeping requirements and the obligation to establish a branch, subsidiary, or representative office within the PRC (arts. 14 and 15). CNOOC has the right to assign personnel to participate in making master designs and engineering designs related to the contract (art. 19). Ownership of all assets purchased or built by the foreign contractor to carry out the contract will belong to CNOOC after the foreign contractor has been compensated for its investment as specified in the contract. CNOOC will also own all the data and records (arts. 20 and 21, para. 1).

Prospects for a Leasing System

Although the PRC has apparently not yet instituted a leasing system for oil and gas resources, establishment of such a system reportedly has been under consideration. On September 7, 1997, the Minerals Management Service of the United States Department of the Interior signed a Memorandum of Understanding (MOU) with the PRC Ministry of Geology and Mineral Resources (as of April 8, 1998, the Ministry of Land and Resources) on information sharing in minerals management. Areas of cooperation covered in the MOU include, among others, conveyance of mineral rights and establishment of a leasing system.[4] The MOU was to remain in place for a 5-year period–that is, until September 9, 2002–but might be amended or extended by mutual agreement of the Parties or terminated at any time by either Party upon 90 days' written notice to the other party (art. 10, para. 1). It is unclear whether the MOU has been extended and the extent to

[4] Art. 2, item 2, of the "Memorandum of Understanding Between the Minerals Management Service of the Department of the Interior of the United States of America and the Department of International Cooperation of the Ministry of Geology and Mineral Resources of the People's Republic of China," available via http://www.mms.gov/intermar/china.htm.

which any plans were formulated for a leasing program.[5]

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[5] A call was placed to the Minerals Management Service on Mar. 24, 2003, to seek more information on the subject but a response has not yet been received.

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INDONESIA

OFFSHORE OIL AND GAS PROGRAMS

A new law on oil and gas, the Law of the Republic of Indonesia No. 22 of 2001 Concerning Natural Oil and Gas, was approved by the Indonesian Parliament on October 23, 2001, and signed by the President and promulgated on November 23, 2001.[1] It replaced laws which were considered highly outdated and out of step with developments in the oil and gas mining business. Under the old legislation, oil contractors operated under production-sharing contracts (PSCs) and variations of PSCs to explore and produce hydrocarbons from a licensed area, with the contractor being reimbursed for allowable expenditures, and in return receiving certain rights to split oil and gas production with Pertamina, the state-owned oil and gas company.

The new legislation revamps the PSC system of awarding rights to oil and gas exploration and exploitation, and adopts a broader, more generic term, the "cooperation contract," which includes, but is not limited to, the PSC. The law ends Pertamina's downstream monopoly and liberalizes oil and gas distribution and retail sectors. It transfers supervision of upstream contracts from Pertamina to a new, independent legal entity, referred to in the 2001 law as the Implementing Body (*Badan Pelaksana*), while Pertamina, formerly a 100 percent government-owned company, is itself to be transformed into a *Persero* or limited liability company, with the government to gradually divest its stake therein. Another body, the Regulatory Body (*Badan Pengatur*) will be the executor for downstream business activities.

The creation of these two new bodies and other changes mandated by the new law are to be completed over a period of 1 or 2 years from the date the law comes into effect. Upstream business activities (exploration and exploitation) and downstream business activities (processing, transportation, storage, and trading) can be carried out by state-owned business entities, business entities owned by regional governments, cooperatives, small companies, and private business entities (BE). However, only a permanent establishment (PE) can carry out upstream activities. A PE is a business entity established and having legal status outside the territory of Indonesia and conducting activity within Indonesia. A BE or PE that carries out upstream business activities may not engage in downstream business activities. A BE carrying out downstream business activities may not also engage in upstream business activities.

A Cooperation Contract must be effected between the BE or PE and the Implementing Body in order to carry out upstream business activities. A Cooperation Contract will

[1] Summary of "Law of the Republic of Indonesia Number 22 of 2001 Concerning Natural Oil and Gas," at www.platts.com.

be a Production Sharing Contract or other form of cooperation contract for exploration and exploitation activities, and must fulfil the following requirements:

- Ownership of the natural resources must remain under the Government up to the point of transfer.
- The Implementing Body will control the management of operations.
- All capital and risk are entirely the responsibility of the BE or PE.

The term for a Cooperation Contract is a maximum of 30 years and can be extended for a maximum of 20 years. The contract area to be offered to the BE or PE will be determined by the Minister of Energy and Mineral Resources after consultations with the local government. Parliament must be notified of any Cooperation Contract signed.

The Cooperation Contract must contain provisions for the following:

- state revenues
- contract area and its relinquishment
- expenditures commitment
- transfer of the title for oil and gas
- terms and conditions for extension of the contract
- dispute resolution
- Domestic Market Obligation (DMO)
- termination of contract
- post mining obligation
- safety, health, and environment
- transfer of rights and obligations
- reporting requirements
- field development plans
- priority on the use of local products or services
- community development
- priority on the use of local manpower

A BE or PE will only be awarded one Contract Area. In the event a BE or PE has more than one contract area, it must establish a separate legal entity for each of the contract areas. A BE or PE is obligated to fulfil the DMO at a maximum of 25 percent of its share of oil and/or gas products.

The first plan on field development must be approved by the Minister of Energy and Mineral Resources, based on the recommendation of the Implementing Body, after consultations with the Provincial Government.

A BE or PE carrying out upstream activities must pay tax and non-tax government revenues. Government revenue in the form of tax will consist of taxes, import duties and other levies on import and excise, and regional taxes and retributions. Non-tax government revenue consists of the government's share of the production, government levies in the form of permanent exploration and exploitation contributions, and bonuses.

Supervision of the implementation of Cooperation Contracts for upstream business activities are to be conducted by the Implementing Body, which will oversee these activities to ensure that the mining of oil and gas resources will give the maximum benefit to the state and the people's welfare.

Thus, while upstream oil and natural gas mining authority will be regulated by the Implementing Body via the Cooperation Contract, downstream activities will be the domain of the Regulatory Body, which will issue business licenses to ensure the availability of petroleum fuels through out Indonesia as well as the safety of natural gas transportation activities.

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INDIA

OFFSHORE OIL AND GAS PROGRAMS

India has enacted several laws and framed rules for development of the oil and gas sector in the country. It has a high energy import (70 percent) dependency. In order to raise indigenous production of crude oil, recently it has framed a New Exploration Licensing Policy (NELP). The policy provides an even playing field to domestic (private and public) and foreign companies in the matter of bidding and obtaining leasing contracts for exploration and production (E&P) in this sector.

The Oilfields (Regulation and Development) Act, No. 53 of 1948

The Oilfields (Regulation and Development) Act of 1948 was enacted to provide for the regulation of oilfields and for the development of mineral oil resources.[1] The provisions state that a mining lease, granted by the Government, is valid only if it is in accordance with the rules made under this Act.[2] The Government may make rules for: granting mining leases of mineral oils and prescribe the authority and manner of granting a lease; the payment of fees in respect of it; and areas for lease, including the conditions subject to which the lease may be granted.[3] A holder of a lease may be subject to the payment of royalty prescribed in the Schedule.[4] However, no royalty shall be paid in respect of crude oil, casing-head condensate, or natural gas which is unavoidably lost or is returned to the reservoir.

The Oilfields (Regulation and Development) Amendment Act, No. 29 of 1998 empowers the Government to amend the rate of royalty prescribed in the Schedule, so as to enhance or reduce the amount leviable. For offshore areas, if the Government is satisfied that it is in public interest, it may exempt any lease from liability to pay royalty to encourage exploitation of mineral oil.[5] It may also, upon being satisfied that it is in public interest so to do, relax the terms and conditions for granting a

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[1] Act No. 53 of 1948, as amended by Act No. 40 of 1949, No. 13 of 1951, No. 67 of 1957, No. 39 of 1969, No. 20 of 1984, No. 4 of 1993, and No. 29 of 1998.

[2] *Id.* § 4 .

[3] *Id.* § 5 and the Petroleum and Natural Gas Rules, 1959.

[4] *Id.* § 6-A.

[5] Act No. 29 of 1998, § 2.

mining lease which may be different from those laid down in the rules made under sections 5 and 6.

The rules made under the Act may provide the method of producing oil from an oilfield, including the limitation or prohibition of such methods. The rules may also require notification of new borings and shaft sinkings and the preservation of boring records, including specimens of all new bore-holes, taking samples from mines and new bore-holes, regulating storage, etc.[6] The Government, by issuance of a notification, may also make rules for alteration of the terms of a lease.[7]

The Petroleum and Natural Gas Rules, 1959

The Petroleum and Natural Gas Rules became effective in 1959. The Rules provide for a state government to grant an E&P license with the approval of the Central Government.[8] In addition to the fees and royalty leviable for the issuance of a license, the lease requires a security deposit, to be held during the period of the lease, to ensure compliance with the conditions of the lease. The area of exploration in the lease will normally be 7,500 square kilometers.

The Rules allow the Central Government to prescribe spacing of the oil and gas wells so that no well shall be drilled within the space prescribed. For the settlement of any dispute respecting the terms of a lease, the lease will provide for a reference to two arbitrators, one each to be appointed by the licensee and the government.

New Exploration Licensing Policy (NELP)

India produces 30 percent of its crude oil requirement. There are three government-controlled companies which make up the oil and gas sector in India: Oil and Natural Gas Commission Limited (ONGC), Oil India Limited (OIL), and Gas Authority of India Limited (GAIL). To enhance indigenous crude oil production and to reduce dependency on its imports, the Government of India has been taking steps to liberalize its E&P policy. It also recognizes the need for foreign investment in this core sector for the rapid development of the Indian industry.

Therefore, in August 1997, it announced a New Exploration Licensing Policy (NELP) which took effect at the end of 1998. The new policy offers economic incentives to foreign oil companies entering India. The many incentives, for improving private investment in E&P, that the NELP provides, include:

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[6] *Supra* note 1, § 6.

[7] *Id.* § 7.

[8] The Petroleum and Natural Gas Rules, 1959, Rule 5.

- There will be no minimum expenditure commitment during the exploration period.
- There will be no mandatory state participation through ONGC/OIL .
- The two public sector upstream companies must compete for petroleum E&P licenses, instead of the existing system of granting licenses to them on nomination basis. The public sector companies will also be able use the fiscal and contract benefits available to private companies.
- There will be open availability of exploration acreage to provide a continuous window of opportunity to companies. The acreage will be demarcated on grid system and pending preparation of the grid, blocks will be carved out for offer.
- Contractors will have the freedom for the marketing of crude oil and gas in the domestic market.
- Royalty payments will be at the rate 12.5 percent for the onland areas and 10 percent for the offshore. Half of the royalty of the offshore area will be credited to a hydrocarbon development fund to fund and promote exploration-related study and activity.
- To encourage exploration in deepwater and frontier areas, royalty will charged at half the prevailing rate for normal offshore area. For deepwater areas beyond 400 meters bathymetry, no royalty or income tax is payable for the first 7 years after the commencement of commercial production.
- Prompt action will be taken by the Ministry of Petroleum and Natural Gas to sign the production sharing contracts for the exploration blocks.
- The licensee will be exempt from the payment of customs duty on imports required for petroleum operations.[9]
- The policy permits 100 percent equity stakes by private and foreign companies against the earlier provision requirement of 40 percent equity by national oil companies.
- Blocks will be awarded under an open acreage system as an ongoing process following international competitive bidding.

Under the First Bidding Round (NELP I), in January 1999, out of the 48 exploration blocks (26 offshore, 12 deep water, 10 onland) 27 blocks saw a total of 45 bids from 12 principal bidders when the bids closed on August 18, 1999. In NELP II, January 2001, 25 exploration blocks were offered (8 shallow water, 8 deep water, 9 onland blocks) when 13 companies submitted bids for 23 blocks by the closing date on March 31, 2001. In NELP III, the Government of India anticipated good participation from all overseas bidders for the 27 exploration blocks (4 new blocks, 23 re-offered blocks).

[9] http://www.tradeport.org/ts/countries/india/mrr/.

On February 4, 2003, the Government signed production sharing contracts with state-owned and private firms for 23 oil and natural block under the new policy. Thus, so far, under the three rounds of NELP, the government has signed a total of 70 oil and gas blocks of production sharing contracts with domestic and foreign firms.[10]

The Indian oil and gas sector traditionally depends on American technology and equipment for the development of this sector. Its oil officials often visit the Oil Show in the United States in May every year. The ONGC of India has an office in Houston, Texas, both for procurement and for staying abreast with the latest oil and gas technology. Private oil companies in India also maintain close contact with the American Oil and Gas industry to monitor the latest trend in this field. American companies, too, already have a strong presence in this sector in India. The share of the U.S. firms is 30 percent of India's imports of Oil and Gas field equipment. A number of U.S. oil exploration companies have already set up their offices in India for maintaining contacts with officials and the industry.

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[10] http://sg.biz.yahoo.com/030204/15/372bi.html.

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MEXICO

OFFSHORE OIL AND GAS PROGRAMS

The 1938 nationalization of the oil and natural gas industry gave the State ownership of petroleum and all solid and gaseous hydrocarbons under Mexican soil and waters. This national patrimony remains a symbol of Mexican sovereignty and independence. PEMEX, the state-owned oil company, has a monopoly over most aspects of the oil and gas industry, from exploration and production to retail. However, PEMEX may contract private companies to drill, provide technical services, and sell retail refined petroleum. A 1995 amendment allows private investments in the transportation, storage, and distribution of natural gas. President Vicente Fox intends to propose amendments to the Federal Constitution to remove the legal barriers to private investment in the exploration and exploitation of natural gas.

Ownership of Natural Resources

In 1938, the foreign oil companies in Mexico were expropriated, and the oil industry was nationalized. Under article 27 of the Federal Constitution, direct ownership of all natural resources of the continental shelf and the submarine shelf of the islands, including petroleum and all solid, liquid, and gaseous hydrocarbons, are vested in the State.[1] In addition, article 27 states that in regards to petroleum and solid, liquid, or gaseous hydrocarbons, no concessions or contracts will be granted, and the Nation must carry out the exploitation of these products.[2] Moreover, Constitution article 28 states that the functions that the State exercises in "strategic" areas, such as petroleum, other hydrocarbons, and basic petrochemicals, do not constitute monopolies.[3]

This national patrimony is viewed as a symbol of Mexican sovereignty and independence; privatization of the oil and natural gas industry is an extremely sensitive issue.[4]

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[1] Constitución Política de los Estados Unidos Mexicanos, as amended , 15th ed. (Editorial Porrúa-UNAM, Mexico, D.F., 2000), art. 27.

[2] *Id.*

[3] *Id.* art. 28.

[4] José Luis Ruiz, *Descarta Fox Privatización*, EL UNIVERSAL, Mexico City, the Internet Version, Sept. 28, 2002,

Oil

The state-owned oil company, Petróleos Mexicanos (PEMEX), has a monopoly over most aspects of the oil industry, from exploration and production to retail, and it enjoys the enthusiastic support of the Mexican people. Oil privatization does not seem to be on the agenda. In September 2002, President Vicente Fox assured oil industry workers that there is no intention of privatizing that industry, adding "we will be half crazy to consider something like that."[5]

However, there are a few opportunities for private companies in Mexico's oil industry. PEMEX is authorized by law to have contracts with private companies to drill for oil and gas and provide technical services;[6] such contracts have been awarded to foreign companies. In addition, private companies are now allowed to sell retail refined petroleum products. Mexico is on the verge of developing technology to produce oil in deepwater offshore fields within the next 4 years to make up for the decline in production in the mainland wells. Although foreign companies possess this technology, the Federal Constitution allows only PEMEX to exploit the nation's oil.[7]

Natural Gas

PEMEX keeps the exclusive rights to exploration, exploitation, processing, and first-hand sales of gas, as well as the transportation and storage required to interconnect the exploitation and processing. However, the natural gas market has been open in a limited way to private investors since 1995. Under the amended Regulatory Law of Article 27 on Petroleum of the Federal Constitution, the transportation, storage, and distribution of gas may be carried out with a prior permit, by the private sector who may build, operate, and own pipelines, facilities, and equipment, under the terms of the governing, technical, and regulatory provisions that may be issued. This liberation is without prejudice to PEMEX's exclusive rights.[8] Additionally, there may be many more opportunities in the near future.

Mexico has the Western hemisphere's fourth largest reserves of natural gas (after the United States, Venezuela, and Canada). The country's consumption of natural gas

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http://www.el-universal.com.mx.

[5] *Id.*

[6] Ley de Obras Públicas y Servicios Relacionados con las Mismas (Diario Oficial (D.O.), Jan. 4, 2000), art. 3.

[7] Oil, Gas, Refining & Petrochemical (Plant Design & Construction) Market in Mexico, Trade Partners UK, at 5 and 8, www.tradepartners.gov.uk.

[8] Decreto por el que se reforman y adicionan diversas disposiciones de la Ley Reglamentaria del Artículo 27 Constitucional en el ramo del petróleo (D.O., May 11, 1995), arts. 3 and 4.

is still low; most of the gas it currently produces is the so-called "associated gas," a by-product of oil production. The government had not emphasized the exploration and exploitation of natural gas until recently.[9] But demand is expected to increase considerably in the coming years. Among the contributing factors to this change are the rapid growth of the industrial sector and the government's goal to generate approximately half of the country's electricity using natural gas by 2007 due to the fact that it is a cleaner, safer, and more efficient fuel.[10] Mexico is currently an importer of natural gas from the United States. These imports are expected to increase by 600 percent in the next 4 years to meet domestic needs and make up for the low domestic productivity.[11]

In response to this expected demand, Mexico is committed to increasing its natural gas productivity because it is cheaper for the country to produce natural gas than to import it.[12] But PEMEX lacks the funds for exploration and production in the oil and gas industry. The government relies heavily on the revenue from PEMEX, which makes up one-third of the government's revenues. This financial obligation has left PEMEX with little resources to invest in the exploration and exploitation of oil and gas. According to PEMEX's president Raúl Muñoz Leos, PEMEX will have to invest $33 billion in exploration by 2006 or risk a 33 percent decline in output.[13]

President Vicente Fox has proposed legal reforms that would allow private financing to fund the expansion of the gas industry. He announced his intention to submit a bill to the Federal Congress proposing amendments to articles 27 and 28 of the Federal Constitution which would remove the legal barriers to private investment in the exploration and exploitation of natural gas.[14]

As an immediate measure to raise the production of natural gas, PEMEX announced that it would take bids for multiple service contracts. Through these controversial contracts, foreign companies will help double the production of gas natural in the

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[9] *Supra* note 7, at 2 and 6.

[10] Jorge Chávez Presa, *The Energy Sector in Mexico: Electricity Privatization*, Mar. 25, 1999, http://www.npal.org/aid/chavez.html.

[11] *Supra* note 7, at 2.

[12] Noé Cruz Serrano, *Requiere Gas Natural de la Inversión Privada*, EL UNIVERSAL, Dec. 27, 2002, http://www.el-universal.com.mx.

[13] *Supra* note 7, at 4.

[14] Noé Cruz Serrano, *Entraría Inversión Privada a Gas Natural*, EL UNIVERSAL, Sept. 17, 2002, http://www.el-universal.com.mx.

Burgos basin by 2006.[15] Mr. Muñoz Leos has indicated that after the Burgos plan is achieved, other gas fields in the Gulf of Mexico, Veracruz, Macuspana, and the continental shelf of the gulf, may be exploited through the multiple service contracts.[16] These contracts are public work contracts based on unit prices. In this new modality of contracts, PEMEX is going to bring together in one contract the services that it has always contracted separately. For the purpose of the contract, the work is divided in three categories: development, infrastructure, and maintenance. The drilling of wells is included in the development-related services. The services will be performed for a term of 10 to 20 years. Under the contracts' provisions, the contractor is liable for damages caused the environment. The Mexican government states that these contracts are in compliance with the Constitution because under the contracts' provisions, the Nation has the property and domain of the hydrocarbons; PEMEX maintains control of the exploration and production, and the contractor only receives a fee for the work performed and services rendered.[17]

The multiple service contracts have raised controversy. Opponents argue that the contracts are equivalent to concessions which are prohibited by the Federal Constitution and that the government is trying to circumvent the Federal Constitution to sell to foreign transnational companies the natural gas that belongs to the nation. Members of the Mexican Congress from the Institutional Revolutionary Party and from the Party of the Democratic Revolution have stated their plans to challenge in court the multiple service contracts as being unconstitutional and to initiate a political trial against Mr. Muñoz Leos as soon as the biding tenders start. It is expected that this phase of the process will occur in June 2003.[18]

The oil and gas sector was included in the North American Free Trade Agreement in a very limited way. Chapter 6 of the Agreement on energy and basic petrochemicals specifies the rights and obligations for trade in crude oil, gas, refined products, and basic petrochemicals.[19] The negotiation of this chapter triggered economic nationalism in Mexico.[20]

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[15] *Supra* note 7, at 2.

[16] Noé Cruz Serrano, *Examina PEMEX Ampliar Contratos de Gas en el Golfo*, EL UNIVERSAL, June 21, 2002, http://www.el-universal.com.mx.

[17] Contratos de Servicios Multiples, CSM, Perspectiva General, PEMEX, http://www.csm.pemex.com.

[18] Alejandro Lelo de Larrea y Juan Arvizu, *Rechazan PRI y PRD Apertura en Gas*, EL UNIVERSAL, June 21, 2002, http://www.el-universal.com.mx.

[19] North American Free Trade Agreement between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States, Ch. 6, U.S. Printing Office, ISBN 0-16--041960-3, 1993.

[20] Jorge A. Vargas, MEXICAN LAW: A TREATISE FOR LEGAL PRACTITIONERS AND INTERNATIONAL INVESTORS, 4th vol. (West Group,

Environmental Considerations

Under Chapter II of the Regulation of the General Law of Ecological Equilibrium and Protection of the Environment in Matters involving Evaluation of Environmental Impact, works, activities, and industries involving petroleum and gas, including the construction of gas and oil pipelines and petrochemicals, require authorization for environmental impact. The Regulation also covers submission of environmental impact statements to authorities of the Secretariat of the Environment, Natural Resources and Fishing; procedures for the evaluation of environmental impact statements; presentation of a preventive report; public participation and the right to information, assurances and guarantees, inspections, safety measures, and penalties; and people's right to complain to the proper authorities about projects perceived to be posing dangers to the ecology.[21] Additionally, Mexico has promulgated an extensive number of quality and emissions technical standards and requirements, known as *Normas Oficiales Mexicans* (Mexican Official Norms). Mexico is committed to bring its environmental and sustainable development practices closer to those of the country members of the OECD, to which Mexico is a party.[22]

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Saint Paul, Minn. 2001), at §40.25.

[21] Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Evaluación del Impacto Ambiental (D.O., May 30, 2000).

[22] Kyoto: From Principle to Practice 243, Peter D. and Donald Zillman, eds. (Kluwer Law International: The Hague, 2000).

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THE NETHERLANDS

OFFSHORE OIL AND GAS PROGRAMS

Prior to January 1, 2003, mining legislation (including oil and gas), was a conglomerate of 14 laws, dozens of governmental decrees, ministerial regulations, and concessions all based on these laws. On January 1, 2003,[1] this widely diversified mining legislation was streamlined and replaced by the Law on Mining,[2] the Decree on Mining,[3] and the Mining Regulation.[4] In the Decree and the Regulation, the main elements of the Law have been worked out. The Law applies to mining activities onshore and offshore. It contains rules on reconnaissance, exploration, and production of minerals such as oil and gas.

The Law states that minerals are the property of the State. Therefore, the exploration and production of oil and gas is prohibited without a license from the Minister of Economic Affairs. An exploration license is exclusive in character. The company that has been given such a license has the assurance that a third party may not explore for the same minerals in the licensed area. A production license is only awarded if it is reasonable to expect that the exploration of minerals for the area for which the license is given is economically feasible.

The Law enumerates the reasons for which a license may be refused, for example technical or financial possibilities of the requester. The holder of an exploration license who has discovered the presence of minerals within the time limits of the license will be awarded a production license. A production license carries an exclusive right to the production of the minerals in the license. The license provides the area and the timetable for which the license is issued.

The Regulation specifies the manner in which an application must be presented and the information that must be provided, for example, the name, seat of business, board of directors, financial information, and technical information with regard to the drilling installations. Applications for explorations and production licenses are published in the official daily paper as soon as possible after they have been submitted in order to give others an opportunity to apply for licenses. The Minister makes a decision by registered letter within 6 months. A licensee can transfer the license or

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[1]Decree of Dec. 6, 2002, Staatsblad (official law gazette of the Netherlands, Stb.) 603.

[2]Law of Oct. 31, 2002, Stb. 542.

[3]Decree of Dec. 6, 2002, Stb. 604.

[4]Regulation of Dec. 16, 2002, Staatscourant (official daily paper) 245, at 17.

parts of the license after consent is given by the Minister in writing. A license may be revoked if it is discovered that the license was granted on the basis of incorrect information, a certain requirement has not been observed, or the circumstances of the licensee have changed to the extent that continuation of the license would harm general interest. If one or more persons or corporations are holding the license, the Law stipulates that one of the license holders must be designated as the operator under whose responsibility the activities and assignments are performed.

The holder of a permit for exploration or production is responsible for the performance of all activities, such as the prevention of damage to the environment, movements of the soil, safety, health, working conditions, and employment conditions. The production is performed according to a pre-approved production plan. In order to cover the liability and damages caused to, for example, the environment, the Minister may determine that financial security is provided by the licensee to cover the possible liability for damages. Additional rules may be imposed by an Administrative Order with respect to the various aspects related exploration and production.

The way in which the State participates is further regulated in the Law; it is possible for the State to participate in up to 40 percent of the exploration and production activities. The Minister of Economic Affairs can, upon being granted a license, require the cooperation of the licensee in setting up a limited company under Dutch law. The share of the participation by the State in the company may vary. Revenues that will accrue to the State, as part of the conditions attached to the exploration and production licenses, may come from the following sources:

- a combination of Profit Share and Corporate Income Tax
- State participation
- royalties
- surface rentals

A Council on Mining advises the Minister of Economic Affairs with respect to decisions that must be made regarding the issuing of licenses for exploration and production. To ensure that the production of minerals is carried out in a responsible and socially acceptable manner, there is State supervision resorting under the Minister of Economic Affairs. The head of the State supervision resorts under the Inspector General of Mines. The supervision of oil, gas, salt, and marl production in the Netherlands is primarily based on the aspects of safety (internal and external), health, the environment, land disturbance as result of the production of minerals, and the appropriate production of minerals. The State Supervision of Mines has two core tasks: law enforcement consisting of supervision, legal investigation of infringements, and administrative tasks, and advising government bodies.

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NORWAY

OFFSHORE OIL AND GAS PROGRAMS

Under Norwegian law, the government owns all petroleum in Norway's continental shelf area. The Ministry of Petroleum and Energy issues licenses for exploration and production of gas and oil from specified areas. Production licenses are operated as partnerships, and one of the two Norwegian state-owned oil companies must be a partner, although since 1991 the Norwegian share no longer must be at least 50 percent.

Offshore Production

Norway is the world's third largest exporter of crude oil, ranking behind only Saudi Arabia and Russia. It is also a major exporter of natural gas. Almost all of this is produced in offshore North Sea fields. When the oil and gas discoveries were made in the early 1970s, Norway had no experience or expertise in petroleum exploration and production. A policy decision was made to organize a state-owned petroleum company which would act as a partner with foreign firms in production of offshore petroleum. The government of Norway plays an active role in regulating offshore exploration and production, in order to maximize sustainability and profitability of the fields and to minimize environmental harm.[1]

Legislative Framework

The basic law governing offshore oil and gas activities is Act No. 72 of November 29, 1996, Relating to Petroleum Activities.[2] This asserts the ownership by the Norwegian State of all subsea petroleum deposits and stipulates in section 1-2 that the management of petroleum resources be carried out with a long-term perspective for the benefit of Norwegian society as a whole. The Ministry of Petroleum and Energy grants exploration licenses for defined regions. These do not give exclusive rights for exploration nor do they confer any preference in the subsequent granting of a production license.

Production licenses give exclusive rights to an area of the continental shelf, which is divided into blocks of 15 minutes of latitude by 20 minutes of longitude.

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[1] Government of Norway, Ministry of Petroleum and Energy, Fact Sheet 2002, *Norwegian Petroleum Activity* at http://odin.dep.no/engelesk/index-b-n-a.html.

[2] Lov 29 november 1996 nr 72 om petroleumsvirksomhet. Amended by Act 98 of December 14, 2001 and by Act 88 of December 20, 2002. Unofficial English translation from EUROPE: BASIC OIL LAWS AND CONCESSION CONTRACTS, SUPPLEMENT 140 (New York, Barrows, 2002) at 79-104 or from the Norwegian Petroleum Directorate at http://www.npd.no/regelverk/r2002/frame_e.htm.

The license-holder is the owner of all petroleum produced. An initial production license is granted for 10 years, but this may be extended by the Ministry for 30 or even 50 years. Before production begins, the license holder must submit a production plan, which covers all technical, safety, commercial, and environmental aspects. It must also include information on how the facility will be decommissioned when production ceases. The Ministry must then approve a production schedule.

Licenses are awarded to companies that compete in licensing rounds, held when the government decides to open further areas to production. In March 2003, the Ministry of Petroleum and Energy invited oil companies to suggest blocks they would like to see included in the 18th licensing round. The Ministry will then decide which areas to include and licenses will be awarded before mid-2004.[3]

Further sections of the Act cover the registration and mortgaging of production licenses, liability for pollution damage, safety issues, and provisions for enforcement and imposition of penalties. The Act is supplemented by an extensive body of regulations, most of which are available in unofficial English translations from the Internet site of the Norwegian Petroleum Directorate.[4] Major topics of the regulations are health, safety, and the environment.

Conditions and Restrictions Imposed on License Holders

Production licenses are awarded, according to the Act, on objective, non-discriminatory, and published criteria.[5] Multinational and foreign companies are, as a matter of course, bidders for and holders of exploration and production licenses. All license holders are subject to the Norwegian government's regulatory and supervisory activities. Norway's National Petroleum Directorate is responsible for resource management and health, safety, and environmental aspects of offshore petroleum activities. According to a spokesman for the Directorate, it prefers to set requirements for what is to be achieved, *i.e.*, setting goals, while making the production companies responsible for decisions on how to meet the goals.[6] Many publications of the Directorate express the attitude that license holders are expected to be actively involved in discussion, negotiation, and communication with the Directorate, rather than acting as passive objects of regulation and inspection.

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[3] Ministry of Petroleum and Energy, Press Release No. 19/03E, March 6, 2003, *18th Licensing Round - Invitation to Nominate Blocks*.

[4] *Id.*

[5] *Supra* note 2.

[6] Thor Gunnar Dahle, *Safety Rules to Trigger Inspection on Oil Platforms* (no date) at http://ean.cepn.asso.fr/pdf/program4/An-Dahle%20.pdf.

When the Ministry awards a production license, it decides which companies will share the license, and may adjust the membership of a group of companies which have jointly applied for a license. The Norwegian system of production licenses assumes that each license will be run by a partnership, and that, as set out by section 3-7 of the Act, the Ministry will appoint one company as operator, responsible for production in accordance with the terms of the license.

Moreover, as set out in section 3-6 of the Act "State Participation," one of the partners in a production license will be the Norwegian government, represented by one of the two state-owned oil companies. From 1973 to 1991 the government had a minimum of 50 percent in each license. Since then its average share has declined. In some cases, the government-owned oil company Statoil is the operator of the license, with more than 50 percent of the enterprise and a number of foreign partners with smaller shares.[7] A White Paper submitted by the government to the Parliament in its 2001-2002 session states that: "The government will continue to take interests in selected new production licenses and permits for installation and operation, on the basis of profitability and resource potential."[8] Partnership with a Norwegian state-owned company is thus a basic condition for any production license.

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[7] *Supra* note 1

[8] Ministry of Petroleum and Energy, Reports to the Storting (White Papers), Report No. 38 (2001-2002) OIL AND GAS ACTIVITIES (Unofficial translation from Norwegian) at http://odin.dep.no/oed/engelesk/p10002017/p10002306/index-b-n-a.html.

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NEW ZEALAND

OFFSHORE OIL AND GAS PROGRAMS

Petroleum exploration and mining is currently at a historically high level in New Zealand. The Government has attributed the country's relatively high place on a list of countries that are most favorable to investment in the oil and gas industry to its unrestricted legislative framework.[1] This framework provides for the granting of prospecting, exploration, and mining permits. Applications are assessed in accordance with provisions outlined in the Minerals Programme for Petroleum.[2] There are three methods for obtaining exploration permits: staged work bidding, cash bonus bidding, and submitting acceptable frontier offer applications. The first two methods are generally preceded by the issuance of block offers. Most mining permits are granted to persons who have developed the area under the authority of an exploration permit. In a few cases, mining permits are granted to other applicants.

There are no statutory or regulatory provisions that restrict the awarding of permits to companies that have a certain level of New Zealand ownership or control; in fact, the United States is a major investor in New Zealand oil and gas development. The Crown Minerals Act does provide that the Government can require permit holders to refine or process any recovered petroleum in New Zealand. If the permit holder is unable to refine or process any recovered petroleum in New Zealand, the Government can step in and require another company to undertake these duties on terms that are either agreed to by the parties or established by the Government.[3]

The Crown Minerals (Petroleum) Regulations, 1999, contain basic rules for the granting of oil and gas exploration permits in New Zealand.[4] One standard that the Minister is required to apply in reviewing applications is whether the applicant will engage in "good exploration and mining practice" or "good oilfield practice." This is a concept that implies that the holder will act in a technically competent manner and with the degree of diligence and prudence reasonably and ordinarily exercised by experienced operators. The Regulations do not address environmental and health and safety matters relating to petroleum prospecting, exploration, or mining. These

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[1] Http://www.med.govt.nz/crown_minerals/petroleum/overview.html.

[2] Http://www.med.govt.nz/crown_minerals/petroleum/legislation/min.../expt-permitregime.htm.

[3] Crown Minerals Act, 1991 (N.Z.) Stat. No. 70, § 45.

[4] .../om_isapi.dll?clientID=10496076&advquery=%5bField%20Legislation%20Ttitle%3a%20%3/24/2003.

matters are provided for in the Resource Management Act, 1991,[5] and the Health and Safety in Employment Act, 1992.[6] Although environmental and safety concerns are relatively high in New Zealand, these laws do not appear to create a significant disincentive to petroleum extraction. However, these laws do require companies to obtain separate permits for operations. Government authorities have discretion in deciding whether a hearing on an application should be held. Joint hearings made be held by two or more consent applications. New Zealand's Hazards Control Commission is empowered to license companies that mine for, produce, or utilize scheduled hazardous substances.[7] Failure to comply with the Commission's directives can result in the termination of licenses.

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[5] 32 Repr. Stat. N.Z. at 131 (1994), as amended.

[6] 1992 N.Z. Stat. No. 92, as amended.

[7] 1991 N.Z. Stat. No. 69, § 344.

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RUSSIAN FEDERATION

OFFSHORE OIL AND GAS PROGRAMS

All Russian offshore oil and gas reserves are designated as federal property of the Russian Federation. Sovereign rights of the Russian Federation over the Russian continental shelf are reaffirmed by the Federal Law on the Continental Shelf of the Russian Federation of November 30, 1995.[1] The Russian offshore zone is defined as the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of Russian land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles where the outer edge does not extend up to that distance. The regime of the continental shelf and the regulation of all activities on the continental shelf are within the exclusive jurisdiction of the Russian Federation, and the legal regime is enforced by the Federal Border Service of the Russian Federation.

Portions of the continental shelf may be allocated to Russian and foreign companies and individuals for the purpose of exploration and exploitation based on results of the bidding (auction). Licenses to engage in exploration and exploitation activities are issued by the Federal Agency for Geology and Use of Subsoil. The Law contains detailed provisions regulating such exploration and exploitation activities. Special attention is paid to activities that involve drilling operations on continental shelf. These activities must be done in coordination with federal security and defense authorities.

Under the Law, the use of Russian mineral resources carries charges established by Russian natural resources and taxation legislation.

Production sharing constitutes the most accepted form of foreign participation in exploration of Russian natural offshore resources. According to the Law on Production Sharing Agreements,[2] the Russian Federation enters into agreements with foreign and domestic investors for the exploration and exploitation of state owned underground mineral resources with a view to sharing the extracted products. Such agreements constitute private law contracts with the rights and duties of the parties governed by the Civil Code of the Russian Federation and the Federal Law on Production Sharing Agreements.

Production sharing agreements are awarded on the basis of competitive bidding.

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[1] SOBRANIE ZAKONODATELSTVA ROSSIISKOI FEDERATSII [Russian official gazette, SZ RF] 1995, No. 49, Item 4694.

[2] As amended on June 18, 2001, ROSSIISKAIA GAZETA No. 118-119, June 23, 2001.

The terms and conditions for specific contract areas are established by a Government-created special commission, and territories eligible for exploration of resources on conditions of production sharing are determined by a federal law adopted in each particular case.

Participants in such agreements are granted exclusive mineral rights for a specified period. The investor's share in the extracted production becomes his property and may be exported from Russia on the terms and conditions specified in the production sharing agreement without any quantitative export restrictions. In addition to the part of production surrendered to the Government, the investor is liable for profit tax and payments for the use of mineral resources. Such payments include a lump sum payment upon the conclusion of the agreement and/or upon the achievement of certain results; annual fees for prospecting and exploration works; and royalties stipulated in percentage of the volume or value of extracted production. As a general rule, the investor is exempt from other taxes, duties, excise, or other payments. He is also exempt from the mandatory sale of foreign currency earned by him. Users of the offshore mineral resources shall comply with Russian environmental legislation; however, there are no special restrictions related to the work in the offshore zone.

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March 2003

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UNITED KINGDOM

OFFSHORE OIL AND GAS PROGRAMS

The Crown owns the rights to oil and gas in the United Kingdom's Continental Shelf (UKCS). The Secretary of State, acting on behalf of the Crown, has the authority to issue licenses which grant individuals the right to search, bore for, and get petroleum in the UKCS for a limited duration. The licenses are issued on a competitive basis in rounds conducted approximately once every 2 years. There are currently three different types of licenses in the UK, although the criteria that must be met before each is issued are similar.

Background

The main offshore oil and gas producing area in the UK is in the North Sea. The oil fields in the North Sea were discovered in the 1970s, and during the last decade production appears to have reached its peak although recent surveys indicate that it is continuing to increase. To exploit these new findings and help the UK recover from the 1998 drop in the price of oil, the government is taking various measures to encourage long term investment and promote the competitiveness of the North Sea oil and gas. Its current measures include the introduction of a new type of license and the reformation of the tax system.

Types of License

There are currently three types of licenses which grant companies certain rights in specified offshore areas. Exploration licenses grant companies non-exclusive rights to survey the UKCS, unless an area is already covered by a production license.[1] Production licenses grant licensees the right to search, bore for, and get petroleum in the UKCS. The promote license was introduced for the first time in 2003 and aims to increase oil and gas activity in the North Sea by granting licensees the authority to assess the area and promote it to investors without having to demonstrate the financial and technical capacity needed for the exploration and production licenses during the initial licencing phase.

Requirements for Licenses

Licenses are awarded on a competitive basis every 2 years during licensing

[1] The different areas consist of blocks of 10 minutes latitude by 10 minutes longitude forming areas of approximately 200 square kilometers in the north to approximately 250 square kilometers in the south. Each block is then divided again into 120 sections of 1 minute latitude by 1 minute longitude.

rounds. An announcement for each round is placed in the Official Journal of the European Union.[2] For the traditional exploration and production licenses, applicants are required to submit a proposal of the program of work that will be undertaken if the application is successful. The value of the works program is essentially the bid for exploration and production; therefore, the most work proposed, the higher the bid.[3] Criteria include the technical and financial capabilities of applicants and whether these are commensurate with the work program proposed.[4] Past business practices of any applicant who has previously been granted a license are taken into account as well as the impact of any work program upon the environment and other users of the sea.[5]

The criteria to obtain a promote license differ slightly from the traditional licenses. The licensee does not have to demonstrate that it has the financial and technical ability to complete a works program until an interim deadline, which is currently 2 years.[6] The license will continue provided that the licensee can demonstrate that it has the financial capacity and technical ability to the work program.[7]

Awarding Licenses

The Secretary of State has the discretion to grant a license to any person that he believes is suitable based on the primary goal of maximizing the exploitation of petroleum resources.[8] This discretion has been substantially reduced by regulations and European Community Law. The main provisions of Community Law applicable in these circumstances are that the Secretary of State cannot discriminate against persons of European Union Member States on the grounds of nationality, nor restrict the

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[2] Hydrocarbons Licencing Directive Regulations 1995, SI 1995/1434. The announcement for the current round is at 2003 O.J.(C 27) 3. The criteria for traditional applicants are financial capacity, technical capability, environmental policy, and any lack of activity or efficiency under a prior license. For promote licenses, the criteria is the applicants "technical and innovative capability to carry out an initial work program, the quality of the applicant's approach to securing additional financial and technical resources needed to complete the substantive work program after the initial 2-year interim period, and any lack of activity, efficiency or responsibility under a prior or similar license."

[3] Doing Business in the United Kingdom, Vol. 2, at 16-11.

[4] *Id.*

[5] *Supra* note 2.

[6] Department of Trade and Industry, APPLICATIONS FOR SEAWARD PRODUCTION LICENSES: NOTES FOR APPLICANTS ON THE PRESENTATION OF INFORMATION TO SUPPORT AND APPLICATION.

[7] *Id.*

[8] 1998 Act, §3.

establishment of services and goods of nationals and companies of EU Member States.[9]

The Secretary of State can, however, refuse of applications on grounds of national security if an applicant is effectively controlled by nationals of a non EU Member State.[10] In addition to this, all companies listed on a license must have an address in the UK, and companies who are new to the UK must provide additional information to the Department of Trade and Industry concerning the nature of the business that it conducts.

Fees

The 1998 Act grants the Secretary of State the authority to issue licenses "for such consideration (whether by royalty or otherwise) as [he/she] with the consent of the Treasury may determine."[11] The royalty, which was 12 percent of the gross value of oil and gas, was abolished for North Sea fields given development consent after 1982 to encourage activity and investment, however, the Model Clause regulations still contain a provision providing for the payment of a royalty.[12]

Fees for the current round of licensing are four annual payments of £150 for each square kilometer covered by the license as well as a subsequent annual payment of £300, rising by £900 each year to a maximum annual fee of £7,500 for each square kilometer covered in the license.[13] The payments for the promote license are reduced by 90 percent for the first 2 years of the license.

Additional fees are covered under corporation tax laws.[14] Currently, the tax laws applicable to the North Sea is a 30 percent corporation tax on ring fence[15] profits, with a supplementary charge of 10 percent on ring fence trade profits "without any deduction for financing costs."[16]

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[9] European Community Treaty Mar. 25, 1957, arts 6 and 52-66.

[10] *Supra* note 2 at 3(5).

[11] 1998 Act, §3(3).

[12] Petroleum (Current Model Clauses) Order 1999 SI 1999/160 at 10.

[13] 2003 O.J. (C 27) 3.

[14] Finance Act 2002, ch. 23.

[15] The ring fence "prevents taxable profits from oil and gas extraction in the UKCS from being reduced by losses from other activities." Department of Trade and Industry, CONSULTATION ON APPROPRIATE TIMING OF ABOLITION OF NORTH SEA ROYALTY, URN 02/901 at 3.

[16] *Id.*

Restrictions on Licenses

Regulations in the UK contains model clauses that are incorporated into each license. The clauses govern issues such as the right of the licensee to surrender areas, the keeping of accounts, safety, payment for licenses, and the duration of licenses.

Each license expires automatically at the end of a set term, specified in the Model Clause.[17] If the Work Program agreed upon during the application process is complete at the end of the license for exploration, which is typically a period of 4 years, the license can be extended for an additional term of 8 years. At the end of the exploration term, the licensee must relinquish a certain amount of the acreage that is covered under the initial license. The second term is intended for appraisal and development, and, if a development plan has been approved by the Secretary of State, it can be extended into a third term, typically a 15-year period, in which production occurs.[18]

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[17] Model Clauses are typically renewed before the start of each licensing period. The current clauses are contained in the Petroleum (Current Model Clauses) Order 1999 SI 1999/160.

[18] *Id.* at 3.