

Oil and Gas Regulation in Morocco: one of the most attractive schemes in the world

The Oil and Gas sector is regulated by the Hydrocarbon Code. These regulations are relatively recent and operators benefit from many incentive measures aiming at stimulating domestic natural resources development.

The Moroccan authorities have succeeded in attracting equity from foreign investors in order to expand exploration on the ground.

The recently signed Petroleum Agreements with large energy companies are symptomatic of the dynamic environment of the Oil and Gas Sector in Morocco.

Introduction

The law n° 21-90 dated 1 April 1992 as amended by law n° 27-99 dated 15 February 2000 related to the exploration and exploitation of Oil and Gas deposits (the "Hydrocarbon Law") is the legislative source regulating the Oil and Gas Sector in Morocco. It is supplemented by applicable decrees (Decree n° 2-93-786 dated 3 November 1993 as amended by Decree n° 2-99-210 dated 16 March 2000) (the "Hydrocarbon Decree"). The Hydrocarbon Law and the Hydrocarbon Decree constitute together the "Hydrocarbon Code".

Oil and Gas in Morocco (and the subsoil in general) are state-owned property. As a result, the State controls all Oil and Gas activities

(exploration and exploitation) in Morocco. In Morocco, the public body in charge of exploring, developing and exploiting hydrocarbons, ensuring the transportation of their production and promoting the exploration and exploitation of hydrocarbons is the *Office National des Hydrocarbures et des Mines* ("ONHYM").

Overview of the Oil and Gas regulation

The Hydrocarbon Code regulates the reconnaissance, the exploration and the exploitation of natural hydrocarbons in land and offshore areas.

The geological, geochemical or geophysical reconnaissance, the exploration for hydrocarbon deposits and their exploitation are subject respectively to the obtaining of a

reconnaissance license, an exploration permit given by the Minister in charge of Energy and an exploitation concession given by decree of the Prime Minister.

Rights for the reconnaissance, exploration and exploitation of hydrocarbon deposits

Reconnaissance license: The reconnaissance license grants an exclusive or non exclusive right to the beneficiary to study the oil-producing nature of the soil.

The reconnaissance license is granted by a decision of the Minister in charge of Energy and may only be granted for areas which are not covered by hydrocarbon exploration permits or exploitation concessions. The reconnaissance license is

granted for a maximum initial period of one year from the date of the notification of the decision of the Minister in charge of Energy and may be extended for one or several periods of maximum duration of one year each and either for part of or for the same area, on condition that liabilities undertaken during the first period have been fulfilled.

Exploration permit: The exploration permit may only be granted to a legal entity or, on a joint basis, to several legal entities which can be either a Moroccan company or a foreign company.

The obtaining of an exploration permit is subject to (i) the demonstration by the applicant that the technical skills and financial means are sufficient for the satisfactory completion of the exploration and (ii) a commitment by the applicant to carry out a minimum programme of works accompanied by a corresponding financial commitment.

Exploration permits are granted within sixty days of the date on which applications are filed, by way of an administrative order issued by the Minister in charge of Energy which is notified to the applicant and published in the Official Gazette.

The granting of an exploration permit is subject to the conclusion of a Petroleum Agreement between ONHYM, acting on behalf of the State, and the energy company. This agreement shall provide that the State shall hold an interest in the exploration permit and the exploitation concession exceeding 0% and up to 25% of such permit and such concession. From a practical standpoint, ONHYM currently holds the maximum participating interest (ie. 25%) in each exploration permit.

The exploration permit is valid for a maximum of eight (8) consecutive years divided into periods (an initial period followed by one or two additional successive periods) determined by an administrative order granting the exploration permit. When hydrocarbons are discovered during the last year of validity of the permit, its duration may be extended by the Minister in charge of Energy for an exceptional period which may not exceed two years.

Exploitation concession: The holder of an exploration permit who has fulfilled its legal and contractual obligations, has the right, in the event of a discovery of a commercially exploitable hydrocarbon deposit, to obtain an exploitation concession over this deposit.

Applications for concessions must be filed with the Minister in charge of Energy no later than three months prior to the expiry of the period of validity of the exploration permit pursuant to which the application is submitted.

This concession is granted by decree upon the proposal of the Minister in charge of Energy and is notified to the interested party and published in the Official Gazette. This act cancels that part of the area of the exploration permit covered by the concession and definitively rules on the granting, the limits and the scope of the exploitation concession.

The period of validity of an exploitation concession may not exceed twenty-five years. A single exceptional extension, which may not exceed ten years, may be granted by decree upon the proposal of the Minister in charge of Energy if the reasonable and economical exploitation of the deposit justifies it.

Key investor issues

Transfer of rights: All or part of the rights and interests in exploration permits or exploitation concessions can be transferred provided that (i) such transfer covers the entire area of the said permit or concession, (ii) the Minister in charge of Energy has provided its prior consent to such transfer, (iii) if the transfer is made to a third party (i.e. not to a parent company or a subsidiary), the State (through ONHYM) has a pre-emption right.

Change of control: The Hydrocarbon Code does not impose any restriction to the change of control of companies holding exploration permits relating to hydrocarbons.

Relinquishment of areas: The relinquishment is mandatory in the case of an extension of the period of validity of an exploration permit.

In addition to such mandatory relinquishment, the holder of an exploration permit may, at any time, partly or totally relinquish its exploration permit, provided that it has fulfilled its work commitments and corresponding financial obligations.

The total area relinquished constitutes the returned land which becomes again available for exploration.

In order to scale down the surface area covered by the exploration permit, the permit holder must inform, the Minister in charge of Energy of the part(s) of the territory which it intends to surrender. The part(s) retained must, as far as possible, form a continuous surface area.

Tax incentives: The holder or, as the case may be, each of the co-holders of an exploitation concession benefits from a total exemption from corporate

income tax for a ten consecutive year-period for each exploitation concession starting on the date of commencement of regular production from each such exploitation concession.

All equipment, materials, products and services necessary for reconnaissance, exploration and exploitation operations are free from customs duties and VAT.

The holders of reconnaissance licenses, exploration permits and exploitation concessions, their contractors and sub-contractors benefit from an exemption from all duties and taxes on the import of equipment, materials and consumable products intended for use in the reconnaissance, the exploration and the exploitation of hydrocarbons and in activities ancillary thereto.

The holders of an exploitation concession are exempted from business activity tax, urban tax other than municipal tax and tax on non-developed urban areas.

The profits and dividends of the holders of an exploitation concession and shareholders of concessionary companies are exempted from the tax on income from shares, capital gains and similar revenues and are freely transferable outside Morocco without limitation for foreign entities.

Foreign exchange control: When the reconnaissance license or exploration permit is held by a foreign company, such foreign company must provide for all of its requirements in foreign currency. When a foreign company is granted an exploitation concession, such foreign company:

- is required to return to Morocco such funds in foreign currency as are necessary to cover its local expenses and its financial and

tax obligations, in addition to the proceeds of their sales in the local market,

- may retain outside Morocco the proceeds of its sales of hydrocarbons made outside Morocco, and
- must periodically provide a statement of its assets held outside Morocco derived from export sales of hydrocarbons, together with the payments made with these assets for the operations relating to its activities as holder of a hydrocarbon exploitation concession.

The transfer of the net proceeds of assets sales is guaranteed if the investment is made by a foreign company. This guarantee relates to (i) the capital contribution made by way of transfer to Bank Al Maghrib of convertible foreign currencies; and (ii) the net capital gain on the assets sale.

When the license or permit is held by a Moroccan subsidiary of a foreign company, the holder of an exploitation concession are required to repatriate to Morocco the proceeds of their sales of hydrocarbons made outside Morocco. A limited and specific derogation may be granted by an authorization of the Minister of Finance upon the proposal of the Minister in charge of Energy in order to meet requirements for foreign currency outside Morocco for the purpose of their activities of exploration for and exploitation of hydrocarbons.

Key role of ONHYM

Legal *statuts*: ONHYM is a public body with legal personality and financial autonomy, placed under the control of Ministry of Energy. ONHYM is in charge of:

- prospecting hydrocarbon and mining in Morocco;
- developing and exploiting hydrocarbon and ensuring the transportation of their production; and
- promoting the exploration and exploitation of hydrocarbons and mining resources.

For the purpose of carrying out its tasks, ONHYM is entitled to (i) acquire any title or authorization needed for the exploration or exploitation of hydrocarbons without being restricted by any applicable legislation or regulation, and (ii) achieve any commercial, industrial or financial operation related to its tasks including the purchasing of stakes in and the setting up of companies aiming to search, convey, treat, exploit or sell hydrocarbons.

ONHYM is managed by a board of directors exclusively composed of government's members and a Managing Director (*Directeur Général*) appointed by law. The Managing Director is solely responsible for representing ONHYM and executing the board of directors' decisions.

Encouraging investors: Through ONHYM, Morocco has given an important boost to its oil and gas industry by encouraging investors to conduct exploration projects in Morocco. The ONHYM's strategic Action Plan for 2012-2016 is based on the development of the exploration already undertaken as well as promotion of all the free zones in order to revive and activate new exploration on these promising prospects. ONHYM's teams are composed of high level experts actively involved in the development of the oil and gas sector in Morocco, and in cooperating proactively with permit applicants and holders in order

to address issues and to ensure the smooth complete of formalities.

Morocco is a hot spot in the Oil & Gas sector

With a very attractive legal framework and the key role played by ONHYM, Morocco has recently emerged as a

promising exploration area with numerous farm-ins, corporate acquisitions and new permit awards. This is expected to lead to an active drilling program in 2014 with new technologies.

A wide range of small, mid and large cap are now showing increased interest in Morocco oil and gas

exploration. Such as Chevron, Total, Kosmos, BP, Cairn, San Leon Tangiers, Genel, Galp, Freeport McMoRan and Chariot, all of which currently hold exploration permits.

ONHYM's website

If you would like to know more about oil and gas exploration, in particular about the petroleum agreements and reconnaissance contracts signed and open acreage, please consult ONHYM's website: <http://www.onhym.com/en/>

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