

Regulation of Upstream Oil & Gas

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Overview

- Outside of OPEC, Oman is the largest oil producer in the Middle East with hydrocarbons contributing nearly 70% to Government revenues.
- A member of the Gas Exporting Countries Forum, Oman is a significant exporter of liquefied natural gas in the region, mainly supplying Japan and South Korea.
- This Practice Note details the legislation and regulation that governs the exploration and extraction processes in the oil and gas sector in Oman.

Definitions

- *The Council*: The Council for Financial Affairs and Energy Resources.
- *ESPA*: Exploration and production sharing agreement.
- *ISCID*: International Centre for Settlement of Investment Disputes.
- *MECA*: The Ministry of the Environment and Climate Affairs.
- *MOG*: The Ministry of Oil and Gas.

Practical Guidance

Legal and regulatory framework

Constitution

The default position in respect of all mineral resources and hydrocarbons in Oman, in their natural forms and wherever found, is that they are the property of the Sultanate. Pursuant to article 5 of Oman Sultani Decree No. 8/2011 Promulgating the Oil and Gas Law, all dealings with petroleum substances are prohibited in Oman without first obtaining a licence from the MOG.

The MOG is the primary regulatory body that governs the oil and gas sector in Oman. Subject to the approval of His Majesty the Sultan, the MOG develops and implements policies aimed at achieving optimum exploitation and utilisation of the oil and gas reserves in the country. The MOG is ultimately responsible for supervising all oil and gas operations across all concession areas in Oman. The MOG also has a role in forward planning and monitors market trends in order to ensure appropriate allocation of resources in the sector.

The Council works in conjunction with The MOG and Ministry of Finance to regulate the fiscal aspects of the oil and gas sector in Oman. In particular, pursuant to Oman Sultani Decree No. 37/1997 Amending some powers of the Financial Affairs and Energy Resources Council, the Council is responsible for formulating the general policy regulating the production and transportation of hydrocarbons, setting the price of gas for domestic consumption and determining the grounds upon which the cost of oil sale is determined. The Council, in conjunction with the Ministry of Finance also has a supervisory role in relation to the Oman Investment Authority (previously the State General Reserve Fund), establishing the policies and rules which the authority must follow when investing money.

Local laws

Oman Sultani Decree No. 8/2011 is the primary piece of legislation governing the oil and gas sector in Oman. In 2018 the MOG announced that corresponding executive regulations would be issued but this has not yet happened. There are other laws and regulations which are applicable to companies operating in the oil and gas sector and these are referenced in the article where relevant.

Treaties and foreign investment protection

Oman is party to a number of international treaties through which protection is given to foreign investors, providing confidence that they will be able to enforce their contractual rights on cross-border investment transactions.

Oman is a signatory to the ICSID Convention treaty which provides a mechanism for investors from the 153 contracting states to make a claim against the government of another signatory state.

Additionally, Oman is a signatory to 38 bilateral agreements and multilateral investment treaties for the reciprocal promotion and protection of investment with many of its key trade partners, all of which contain arbitration provisions in accordance with the ICSID rules.

Licensing procedure and concession structures

Article 7 of Oman Sultani Decree No. 8/2011 states that no exploration, excavation or development of petroleum substances can be carried out except under concession agreements granted by the Omani government, represented by the MOG.

Concession agreements take the form of an EPSA which include a concession area within which the concession holder has the exclusive right to search for hydrocarbons. Generally, the EPSA will be granted for an initial period of three years, during which the exploration process can take place and may be extended by an additional three years if the search is ongoing. If the exploration effort is successful, the EPSA contains a mechanism where commerciality is demonstrated which, if proven, will lead to a further extension to allow the concession holder to develop the oil or gas.

Omani legislation does require limited content that must be included in an EPSA and certain principles which must be adhered to. The MOG has a standard form EPSA which has been developed over a period of years and is used for all licensing rounds. Whilst the document is a standard form, the terms of an EPSA are open to limited negotiation and agreements will differ depending on the practical and commercial realities of the intended oil and gas project. The Omani EPSA is a well-developed and accepted precedent which covers the areas developers would expect, including, the concession area and term, the payment mechanisms and the conditions upon which exploration, appraisal, commercial discovery and extraction is to take place.

Concession holders are normally international and local oil companies, but the Government also indirectly participates as a concession holder through the state owned oil companies, Petroleum Development Oman (being 60% government owned with the remaining 40% shareholding made up by various international oil companies) and OQ which now operates the holdings of OOCPEP.

Key issues: company establishment, liabilities, transfer of rights, security and decommissioning

Company establishment

Oman Sultani Decree No. 50/2019 on the Issuance of the Foreign Capital Investment Law requires foreign investors to be registered with, and licensed by, the Investment Services Centre at the Ministry of Commerce and Industry (the Centre) or the Public Authority for Investment Promotion and Export Development. It is currently unclear what the registration and licensing processes involve as it is not covered in Oman Sultani Decree No. 50/2019 or Oman Ministerial Decision No. 72/2020 on the Issuance of the Implementing Regulation of the Foreign Capital Investment Law. Article 9 of Oman Ministerial Decision No. 72/2020 contemplates an investment manual being issued by the Centre which sets out the "terms, conditions, rules, procedures and timings" pertaining to licensing but this has not yet been issued. However, based on Oman Sultani Decree No. 102/1994 to Promulgate the Foreign Capital Investment Law, it is likely to at least require any foreign company interested in investing into the oil and gas sector to establish a corporate presence in Oman.

Liabilities

The liability regime in respect of each concession will largely depend on the terms of the EPSA. However, concession holders should give due consideration to its employees and the environmental impact of its operations so as not to trigger the following legislative penalties:

- Pursuant to Oman Sultani Decree No. 114/2001 Promulgating the Law of Conservation of Environment and Prevent of Pollution and other comprehensive health, safety and environmental regulations, it is unlawful for concession holders to permit waste; they must strive to minimize the discharge of pollutants and ensure that irreparable damage is not done to the environment. Penalties for breaching the legislation targeted at reducing pollution range from strict fines of up to three times the cost of restoration works to criminal prosecution.
- A breach of Oman Sultani Decree No. 35/2003 on the Promulgation of the Labour Law can result in financial and administrative penalties being levied against the concession holder and in severe cases, may lead to criminal prosecution.

Transfer of rights

It is generally possible under an EPSA to negotiate the inclusion of a right to transfer to a majority-owned affiliate company. However a Royal Decree will be necessary to transfer rights pursuant to article 11 of Oman Sultani Decree No. 101/1996 Promulgating the Basic Statute of the State, which states that concessions of 'public resources' can only be granted by law. Additionally, article 19 of Oman Sultani Decree No. 8/2011 prohibits concession holders from transferring or relinquishing rights granted under an EPSA without prior approval by the MOG.

Security

In accordance with article 12 of Oman Sultani Decree No. 8/2011, the MOG may request that the prospective concession holder provides financial security of between 2% and 5% of the value of the agreement, which is to remain valid for the entire term of the EPSA.

Decommissioning

Whilst there is no legislative requirements in respect of the decommissioning of oil and gas facilities in Oman, article 16 of Oman Sultani Decree No. 8/2011 does provide that a concessionaire is responsible for restoring the concession area to its previous condition following the end of a concession agreement. Article 16 of Oman Sultani Decree No. 8/2011 obligates the concession holder, at its own cost, to remove any building, plant, machinery, equipment or any residue and other substances from the concession area within a time frame established by the MOG. Failure to comply with this obligation will result in the MOG completing the decommissioning work and charging the cost of such works, in addition to a 10% premium, to the concession holder.

The EPSA will generally detail more specific decommissioning obligations and often sets out a requirement for the concession holder to establish and maintain a decommissioning fund to be planned and accounted for in compliance with International Financial Reporting Standards. Failure to comply with decommissioning obligations may result in the government retaining the fund or enforcing any security taken to cover the cost of decommissioning works.

Health, safety and environment

In Oman's oil and gas sector the health, safety and environmental regime is comprised of a number of pieces of legislation and industry specific Ministerial Decisions. Generally, health and safety provisions are governed by Oman Sultani Decree No. 35/2003 and Oman Ministerial Decision 286/2008 in relation to Occupational Health and Safety Measures, as amended by Oman Ministerial Decision 322/2011, whilst the primary environmental legislation is Oman Sultani Decree No. 114/2001.

Particularly relevant to concession holders, legislative obligations in relation to the prevention of pollution are contained in Oman Sultani Decree No. 8/2011 and Oman Sultani Decree No. 114/2001. Pursuant to article 9 of Oman Sultani Decree No. 114/2001, before an EPSA can be granted an environmental permit must first be obtained which confirms that a project is environmentally sound. Such a permit may be predicated on satisfying a preliminary environmental impact assessment. Chapter 6 of Oman Sultani Decree No. 8/2011 relates specifically to the environmental considerations the concessionaire is required to adhere to, covering non-disposal of gas, water contamination and curbing the environmental impact of explosions and accidents. Article 13 of Oman Sultani Decree No. 8/2011 requires concession agreements to contain environment, health, security and safety preservation requirements. Additionally, article 27 of Oman Sultani Decree No. 114/2001 provides that contracts pertaining to the exploration and exploitation of oil and gas must incorporate provisions to ensure compliance with Oman Sultani Decree No. 114/2001 and ancillary regulations.

Examples of the industry specific Ministerial Decisions on health, safety and environment applicable to the oil and gas sector include Oman Ministerial Decision No. 286/2008 and Oman Ministerial Decision No. 18/1993 on the Regulation of the Management of Hazardous Waste Amended by Oman Ministerial Decision No. 10/2017. The former provides a comprehensive regulatory framework aimed at improving workplace safety standards and the latter regulations govern the disposal of hazardous waste, including the sort produced by oil and gas extraction, and requires those needing to discharge such waste to obtain an additional licence issued by MECA.

Comparison with other regimes

Oman's oil and gas regime is similar in its approach to its neighbours. To take the example of the UAE, the oil and gas of each Emirate is the property of that Emirate, and whilst the federal Ministry of Energy develops general policy, each Emirate determines its own regulatory framework. A structure very similar to that used in Oman.

Oman's hydrocarbon sector offers excellent opportunities to developers; it has a stable and well understood regime along with a broad range of experienced subcontractors. Further, the complex geology favours international developers who are likely to have better access to cutting edge technology.

Related Content

Related Content

- Oman Sultani Decree No. 8/2011 Promulgating the Oil and Gas Law
- Oman Sultani Decree No. 37/1997 Amending some powers of the Financial Affairs and Energy Resources Council
- Oman Sultani Decree No. 50/2019 on the Issuance of the Foreign Capital Investment Law
- Oman Ministerial Decision No. 72/2020 on the Issuance of the Implementing Regulation of the Foreign Capital Investment Law
- Oman Sultani Decree No. 102/1994 to Promulgate the Foreign Capital Investment Law
- Oman Sultani Decree No. 114/2001 Promulgating the Law of Conservation of Environment and Prevent of Pollution
- Oman Sultani Decree No. 35/2003 on the Promulgation of the Labour Law
- Oman Sultani Decree No. 101/1996 Promulgating the Basic Statute of the State
- Oman Ministerial Decision 286/2008 in relation to Occupational Health and Safety Measures
- Oman Ministerial Decision No. 18/1993 on the Regulation of the Management of Hazardous Waste Amended by Oman Ministerial Decision No. 10/2017

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Biography

Tom specialises in the energy sector and heads up the firm's Energy and Natural Resources team. He specifically works on oil and gas work, power generation and transmission, water and infrastructure development projects.

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Biography

Lydia has been with Trowers & Hamlins since 2014 and has been based in Muscat since 2016. Lydia has extensive energy, construction and project finance experience in the GCC, the wider Middle East region and the UK. Lydia acts for a variety of public and private sector companies across the firm's projects, infrastructure and energy practice. Lydia has spoken at various events in Oman in relation to projects and energy, most recently at the Oman Ministry of Legal Affairs.