
THE OIL AND GAS LAW REVIEW

EDITOR
CHRISTOPHER B STRONG

LAW BUSINESS RESEARCH

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CHRISTOPHER B STRONG

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EDITOR'S PREFACE

I am very pleased to have been able to take part in this first edition of *The Oil and Gas Law Review*. This publication is intended to be a practical analysis of recent developments around the globe in this exciting industry. My hope is that it will serve as a valuable resource to attorneys in private practice, in in-house positions, in government service and in academia who are seeking to keep abreast of legal developments on the oil and gas front.

Input from leading oil and gas practitioners around the world has been gathered for *The Oil and Gas Law Review*. The publication is divided into 22 chapters, each addressing legal issues in a particular jurisdiction. Our goal in selecting these jurisdictions was to ensure that most of the major oil and gas producing regions were represented. Although the oil and gas business is a global one, laws and regulations vary significantly from jurisdiction to jurisdiction, and sometimes even between states or regions of a particular jurisdiction. For practitioners within the oil and gas industry, keeping up with global legal developments is a constant effort. By gathering recent and insightful information from the world's major oil and gas jurisdictions this book will be a major step in addressing this need.

Over the past several years, a number of major trends have emerged in the global oil and gas industry. The first and undoubtedly most important of these is the growing importance of unconventional resources to the global oil and gas industry. The 'shale boom' that started in North America and is slowly starting to spread to other parts of the world has upended the industry. The United States looks set to shortly becoming a net exporter of petroleum for the first time in decades, and other jurisdictions are seeking to emulate its success. At the same time, lawmakers and regulators, particularly those in jurisdictions that are unused to large-scale onshore exploration and production activities, are struggling with how best to address the inherent environmental issues. The struggle with how to effectively balance the benefits of increased domestic production of petroleum with the perceived environmental risks of 'fracking' will no doubt occupy the attention of lawmakers, regulators and lawyers for many years.

A second emerging trend is the opening (or reopening) of new jurisdictions to oil and gas exploration and production activities. Jurisdictions such as Tanzania and Mozambique, which just a few years ago received scant attention from international oil and gas companies, are now receiving significant attention, with major gas finds seemingly announced on a monthly basis. A similar situation is playing out in the Eastern Mediterranean, where discoveries in offshore Israel, Lebanon and Cyprus have the potential to transform both economies and regional politics. Iraq, closed to foreign investment during its years of economic sanctions, has re-emerged as one of the world's major oil provinces with both majors and independents investing billions of dollars in petroleum sector. Finally, decades after nationalising its oil industry, Mexico's new president has announced plans to allow private investment in its upstream sector. Each of these jurisdictions will have to craft a legal regime that strikes an appropriate balance between attracting foreign investment while at the same time ensuring that economic rents are retained by the state for the benefit of the people.

Finally, in a period of sustained high oil prices, resource nationalism is an issue in many parts of the world. Whether taking the form of windfall taxes, forced renegotiation of contractual terms agreed during a period of lower prices, or stronger measures, oil and gas investment remains an area fraught with political and legal risk as some producing jurisdictions seek to change the rules of the game mid-course in light of increased oil prices and other changed circumstances from the time an investment was originally made. Although impossible to avoid entirely, lawyers advising clients in the oil and gas business are constantly seeking to get a handle on political and legal risk so that they can advise their clients accordingly.

Each of the trends mentioned above, as well as a number of others that space has not permitted me to discuss, will no doubt attract considerable attention from lawmakers, regulators and attorneys in the coming year, and I hope that the readers of *The Oil and Gas Law Review* will find it to be a helpful resource in that regard. I am grateful to all of the contributing authors for their efforts and insights.

Christopher B Strong

Vinson & Elkins LLP

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Chapter 19

TANZANIA

Wilbert B Kapinga and Angela Thorns¹

I INTRODUCTION

The United Republic of Tanzania has a long history of exploration for oil and gas, with the first gas discovery made at Songo Songo Island in the 1970s. This was followed by further discoveries at Mnazi Bay, located in south-east Tanzania in the Ruvuma Basin, Mkuranga and Kiliwani North. In 2010 Tanzania's growth projections were boosted substantially following significant natural gas discoveries currently confirmed at 43 trillion cubic feet. These resources are expected to more than double by 2015 and have placed Tanzania firmly on the map for foreign investors seeking new opportunities. Despite efforts to undertake petroleum exploration, Tanzania has not yet discovered oil and is currently completely dependent on imported petroleum products. Yet large oil discoveries in neighbouring Uganda and Kenya are encouraging for Tanzania, in particular in the Lake Tanganyika area.

The government of Tanzania and the Tanzania Petroleum Development Corporation (TPDC) have concluded around 25 production-sharing agreements (PSAs) with 18 companies seeking to conduct exploration activities both offshore and onshore. The TPDC is a wholly-owned parastatal company established by law having a separate juridical personality. Its role is that of, among other things, promoting the development of the petroleum industry and the production of petroleum and it is through the TPDC that the Ministry of Energy and Minerals implements its petroleum exploration and development policies.

Significant natural gas discoveries have been made by major exploration companies including British Gas International (BG), ExxonMobil Corporation, Ophir Energy plc and Statoil ASA. On 1 May 2013, BG announced the discovery of significant quantities of natural gas in the Mzia-2 site, situated 4 kilometres from the Mzia-1 discovery and

¹ Wilbert B Kapinga and Angela Thorns are partners at Mkono & Co Advocates.

approximately 45 kilometres off the coast of southern Tanzania. This was swiftly followed by Ophir Energy also announcing positive results following the Pweza-3 drilling and flow test in Block 4. Incidentally, BG are the operators for Blocks 1, 3 and 4 offshore Tanzania having farmed into these blocks for a 60 per cent interest in each of the PSAs originally concluded by Ophir Energy. Ophir's interest has therefore been reduced to 40 per cent with BG becoming the operator of Blocks 1, 3 and 4 on behalf of the joint venture.

Statoil ASA, through its Tanzanian branch, signed its PSA for block 2 in 2007. It is the operator with 65 per cent working interest in partnership with ExxonMobil Exploration and Production Tanzania Limited, which has a 35 per cent interest. In 2012 and 2013 these two companies made the significant Zafarani, Lavani and Tangawizi discoveries in block 2, which covers an area of approximately 5,500 square kilometres and lies in water depths of between 1,500 and 3,000 metres. The discoveries have 10 to 13 trillion cubic feet of proven recoverable gas resources.

Tanzania is expecting to produce about 1 trillion cubic feet of natural gas from the Songo Songo Island concession and 2 trillion cubic feet from the Mnazi Bay area. All of the country's natural gas production is currently consumed locally. There is only one 225 kilometre pipeline connecting Songo Songo Island and Dar es Salaam. In order to meet increasing demand for natural gas production in the coming years a gas pipeline is being constructed to transport the natural gas from Mnazi Bay to Tanzania's capital, Dar es Salaam.

As a result of the offshore natural gas discoveries described above, Tanzania's potential to become a natural gas exporter in the next decade or so has grown exponentially. Plans are being developed to build a liquefied natural gas (LNG) terminal costing in the region of US\$10 billion in order to service various markets.

The government recognises the importance of adopting a holistic approach to the sector and has embarked on the implementation of a Natural Gas Policy (the Gas Policy). The objectives of the Gas Policy are to provide a comprehensive framework for guiding the development and growth of the industry and to ensure optimal benefits for the country and its citizens. Following extensive consultation with stakeholders, a third draft of the policy was published in May 2013 and the process for approval of this highly awaited Gas Policy is under way. The Gas Policy paves the way for the designation of a national oil and gas company, reform of the TPDC, the division of the regulatory and commercial roles, a Gas Utilisation Master Plan and a Gas Act.

II LEGAL AND REGULATORY FRAMEWORK

The main law regulating exploration and production in the United Republic of Tanzania is the Petroleum (Exploration and Production) Act, 1980 (Cap 328 RE 2002). Albeit not industry-specific, other laws are relevant to the upstream oil and gas industry including the Income Tax Act, 2004, the Environmental Management Act, 2004, and the Fair Competition Act, 2003.

There are plans to strengthen the legal and regulatory framework by way of amendment of existing laws and enactment of new laws and regulations in a bid to

bring the Tanzanian oil and gas legislation in line with generally accepted international standards and to ensure efficient and sustainable development of the natural gas industry.

i Domestic oil and gas legislation

The Petroleum (Exploration and Production) Act vests the United Republic of Tanzania with ownership of and control over any petroleum underlying the land forming part of the Tanzanian Republic (i.e., mainland Tanzania and Zanzibar) and applies to land beneath territorial waters, the seabed and subsoil of the continental shelf. As a result no person is authorised to conduct exploration or production activities without a licence conferred in terms of the Act.

The term 'petroleum' includes any naturally occurring hydrocarbon or mixture of hydrocarbons whether in solid, liquid or gaseous state, as well as any naturally occurring mixture of one or more hydrocarbons whether in a solid, gaseous or liquid state and any other substance.

The Act sets out various provisions relevant to upstream operations including but not limited to:

- a* the constitution of blocks;
- b* licensing including the division of licences into two categories, that is, exploration and development licences, as well as the granting and term of such licences;
- c* surrender, cancellation and suspension of licences;
- d* transfers of rights and registration;
- e* accepted work practices;
- f* financial provisions;
- g* surface rights; and
- h* service of documents under the Act.

ii Regulation

Upstream activities are regulated by the Tanzanian government through the Minister of Energy and Minerals, being the minister responsible for petroleum affairs.

The Minister's functions and powers under the Act are extensive and can be generally categorised as follows:

- a* the Minister enjoys various decision-making powers, including the power to decide whether to grant or refuse an application for an exploratory or development licence and what conditions, if any, should be imposed on the licence holder. He may also take measures to suspend or cancel a licence where the licence holder is in default;
- b* the Minister is to be kept informed of relevant matters and events during the exploration and development process and may initiate requests for information if he deems fit. For instance, in the event of a discovery of petroleum he is to be furnished with relevant particulars in writing within a period of 30 days after the date of the discovery;
- c* the Minister may give directions to licence holders. This includes directions to a licence holder where a petroleum discovery has taken place in order to ascertain the chemical composition and physical properties of the petroleum so discovered.

In the exercise of these powers and functions, the Minister is to act within the parameters set out in the Act. A case in point is Section 20(2), where the Minister is authorised to consider an application in respect of more than 60 blocks but not more than 200 blocks where he is satisfied that special circumstances exist for his doing so.

The Petroleum (Exploration and Production) Act establishes the office of Commissioner for Petroleum Affairs (the Commissioner), who is appointed by the President of the United Republic of Tanzania. This office has been set up within the Ministry of Energy and Minerals.

In the Act the functions of the Commissioner are complementary to those of the Minister of Energy and Minerals, who ultimately remains the regulator of upstream activities. Some notable examples of the Commissioner's functions include the following.

Where petroleum is discovered in an exploration area, the registered holder of the licence is to immediately inform the Commissioner of the discovery and furnish the Minister with particulars of the discovery in writing within a period of 30 days after the date of the discovery.

In the case of a petroleum discovery, the Commissioner may make a written request to the registered holder of the licence, directing the holder to furnish particulars of the chemical composition and physical properties of the petroleum discovered, the nature of the subsoil in which the petroleum occurs and any other matters relating to the discovery as may be specified by the Commissioner.

Where petroleum is not being recovered in a development area and the Minister is satisfied that there is recoverable petroleum in that area, he may direct the registered holder of the development licence to take all necessary and practicable steps to recover that petroleum. In this context, the Commissioner may give to the holder specific directions as he thinks fit for or in relation to the recovery of petroleum in the development area.

If a registered holder of a licence wishes to surrender all or any of the blocks relative to the licence, an application is to be made to the Commissioner for a certificate of surrender not less than 90 days before the date on which the surrender is intended to have effect. On such application the Commissioner shall issue a certificate of surrender either unconditionally, or subject to such conditions as are specified in the certificate in respect of the blocks to which the application relates after having consulted with the Minister.

Further, if a certificate of surrender is issued, the Commissioner will proceed to amend the licence accordingly, or proceed to cancel the licence, as the case may be. In either case the Commissioner is required to give notice to the applicant for the certificate of surrender of the amendment or, as the case may be, the cancellation, and of the issue of the certificate of surrender.

The TPDC also plays a significant role in the upstream sector since the government order establishing its existence (Government Notice No. 140 of 30 May 1969) lists the TPDC's objectives as including:

- a* exploration and production of petroleum;
- b* holding exploration and production rights;
- c* contracting, holding equity or participating in oil concessions, franchises and licences; and
- d* development of an adequate industrial base for the oil industry.

By virtue of a government announcement in July 2006 the TPDC's functions also include the promotion and monitoring of exploration for petroleum; development and production of petroleum; management of exploration and production data; as well as marketing and sale of natural gas under PSA arrangements. As will be seen later on, the TPDC plays a pivotal role at all stages of the upstream process.

iii Treaties

Tanzania has entered into a number of bilateral treaties for the promotion and protection of foreign direct investment with Denmark, Finland, Germany, India, Italy, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom and Zambia.

Tanzania is a member of several organisations including the International Centre for the Settlement of International Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA). It is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Several double taxation treaties have been signed by Tanzania with Canada, Denmark, Finland, India, Italy, Norway, South Africa, Sweden and Zambia. Tanzania is also in the process of negotiating treaties with several countries including Belgium, Burundi, Lebanon, Malaysia, Mauritius, Pakistan and Rwanda.

III LICENSING

Only a Tanzanian citizen or company can hold an interest in a petroleum licence. In practice, the government of Tanzania, through the Minister for Energy and Minerals, grants a licence to the TPDC, upon an application made, in relation to such area specified in the licence. The TPDC, in turn, holds the licence and engages an exploration company to undertake exploration, development and production activities.

The Minister may enter into an agreement with respect to the grant of a licence, any conditions to be included in the licence so granted, and any other connected matter. The agreement should be consistent with the Act and is entered into by the Minister on behalf of the government of the United Republic of Tanzania, the TPDC as licence holder and the exploration company intending to conduct upstream activities as contractor. The type of agreement commonly used to set out the detailed terms for exploration rights is the production sharing agreement (PSA). The PSAs concluded to date by the government of Tanzania, the TPDC and exploration companies are based on a standard model production sharing agreement (Model PSA) incorporating internationally competitive terms. The Model PSA serves as the basis for negotiations with the government and the TPDC and is updated regularly with versions published in 2004, 2008 and 2013. The TPDC has also published a Model PSA Addendum for Natural Gas aimed at facilitating the commercialisation of any natural gas discoveries in deep-sea areas. It is also common for contractors to enter into implementation agreements with the government and the TPDC to regulate the development of eventual discoveries, including the processing of such discoveries, the development of infrastructure and the marketing of the product.

The process by which licences are awarded is not dealt with in much detail by the Petroleum (Exploration and Development) Act. The law enables the Minister, by notice published in the government gazette, to invite applications for the grant of an exploration

licence in respect of specific blocks and to establish a deadline by when applications are to be received. The opening of the licensing rounds is a highly publicised event and bid documents are made available to interested parties setting out instructions to be followed by applicants when completing and submitting their bids. Interested parties are to submit, *inter alia*, proposals for work and minimum expenditure in respect of the block or blocks specified in the application, give particulars of the financial resources available, technical and industrial qualifications and resources and submit proposals for training and employment of citizens of Tanzania.

An exploration licence is valid for a period of four years from the date of issuance ('initial exploration period') and confers the exclusive exploration and development rights for petroleum in a specific area and the right to carry out such operations and execute such works as may be necessary. The licence will identify the exploration area and require that the TPDC conducts exploration operations in accordance with a detailed work programme and budget. These are set out in detail in the PSA entered into between the government of Tanzania, the TPDC and the exploration company. The exploration licence normally imposes other conditions, such as requiring the TPDC to reinterpret all existing seismic data and to integrate previous geological studies; to acquire high-resolution gravity and magnetic surveys; to drill at least one exploration well subject to the geology or relinquish all acreage within the initial exploration period; and to expend a sum of money agreed upon in the PSA for geological and geophysical work.

Following the initial exploration period, the Act allows two further extension periods to be granted by the Minister in respect of an exploration licence. The extension periods are divided as follows:

- a* on application duly made for the extension of an exploration licence, an extension to the initial exploration period is granted for a period of four years (the first extension period); and
- b* on application duly made for a further extension of an exploration licence, a second extension may be granted for a period of three years (the second extension period).

The Minister is required to grant an extension unless there is a default on the part of the licence holder or if the proposed work and expenditure for the extension period under consideration are not deemed to be adequate. It is commonplace for the PSA to set out in detail the description of work and minimum expenditure required for each extension period thus ensuring certainty for the parties to the PSA.

A development licence may be granted by the Minister if he is satisfied that a commercial discovery of petroleum has been made. An application for a development licence is made by the TPDC on the contractor's behalf and is required to include a plan drawn up by the contractor, in consultation with the TPDC, which is designed to ensure maximum recovery of petroleum from the development area concerned in compliance with good oilfield practices. The Model PSA 2013 envisages an appraisal programme of up to three years for oil and up to four years for gas. The application for a development licence is to be made within two years of the date that the relevant blocks are declared to be a 'location' (i.e., an area within which a discovery has been made). A development licence is granted for 25 years with the possibility of an extension for a further 20 years. During this time, exclusive rights to carry on exploration and development operations

in the development area and to sell or dispose of the petroleum recovered are conferred on the licence holder.

Other key standard contractual terms in the Model PSA 2013 are set out below.

Optional participation in development by the TPDC is envisaged by way of contribution to contract expenses, excluding exploration and appraisal expenses. The 2013 Model PSA sets out an optional working interest of not less than 25 per cent and allows the TPDC to notify the contractor of its intention to participate by notice in writing at any time. A joint operating agreement would be entered into setting out the terms of joint operations. It is commonplace for such an agreement to be based on the form of the Association of International Petroleum Negotiators Model Joint Operating Agreement. The 2013 Model PSA also includes a mechanism for an interest bearing loan to be granted to the TPDC where it is unable to pay the contract expenses which is reimbursable on a preferential basis from the TPDC's share of profit oil or gas.

Cost recovery in respect of operations is equal to 50 per cent of the total production, net of royalty, under the 2013 Model PSA.

Detailed provisions are included in the Model PSA setting out the method of valuation of crude oil and gas.

A performance bond from a reputable financier and parent company is to be procured by the contractor to guarantee its obligations under the budget and work programme.

The 2013 Model PSA provides for disputes to be settled in accordance with the International Chamber of Commerce Rules of Conciliation and Arbitration and the place of arbitration stated therein is Dar es Salaam, Tanzania. Yet it is possible to agree on different arbitration rules, such as the London Court of International Arbitration Rules. The applicable law is stated as Tanzanian law.

A signature bonus of US\$2.5 million is payable on signing of the PSA and a production bonus of US\$5 million is payable on commencement of production.

Annual charges to be dispensed to TPDC for the exploration licence are calculated by charging the following amounts for every square kilometre of the contract area under the PSA:

<i>Period</i>	<i>US\$/km²</i>
Initial exploration period	50
First extension period	100
Second extension period	200

Annual charges for a development licence payable to TPDC are stated as US\$500 per square kilometre.

IV PRODUCTION RESTRICTIONS

The Petroleum (Exploration and Development) Act requires a development licence to include conditions with respect to the duty of the registered holder to supply petroleum so as to meet the local needs of Tanzania.

According to the 2013 Model PSA, any crude oil or natural gas produced is to be shared between the contractor and the TPDC in accordance with a sliding scale that depends on daily production rates for the calendar quarter. A contractor is entitled to 30 per cent when production is zero to 12,499 barrels of oil per day and 10 per cent when production is more than 100,000 barrels of oil per day. Valuation of crude oil is based on the average price of sales of the relevant type of crude from the development area in the previous quarter. In the case of deep waters and Lake Tanganyika North areas, the contractor is entitled to 40 per cent when production is up to 149,999 million standard cubic feet per day and 15 per cent when production is 750 million standard cubic feet per day and above. Where joint operations are in place the TPDC's share is to be increased to reflect its interest in the venture.

The 2008 Model PSA catered for a scenario where domestic demand exceeded the TPDC's total entitlement to profit oil or gas, in which case the contractor was required to sell its share of profit oil or gas in Tanzania. The share of oil or gas to be sold would be calculated on a *pro rata* basis with other producers in Tanzania, not taking into account any production by the TPDC. The 2013 Model PSA contains an obligation on the TPDC and the contractor to satisfy the domestic market from their proportional share of production. The volume to be supplied to domestic markets is determined by mutual agreement of the parties to the PSA and in any case, on a *pro rata* basis with other producers in Tanzania.

The Gas Policy addresses the issue of natural gas pricing in that it envisages the creation of an appropriate pricing mechanism to be based on a set of key principles reflecting reasonable costs incurred, reliability and quality of service and ensuring a fair return on invested capital. Developments in relation to the natural gas pricing mechanism are expected in 2014.

V ASSIGNMENTS OF INTERESTS

The Act allows for assignment or transfers of oil and gas interests upon prior approval in writing from the government of Tanzania through the Minister for Energy and Minerals. Specifically the Minister is required to approve a transfer of a licence or an instrument by which a legal or equitable interest in, or affecting a licence is created, assigned, effected or dealt with, whether directly or indirectly.

Since the licence is held by the TPDC, where a contractor wishes to assign or transfer any rights under the PSA it is required to obtain prior written consent from the Minister of Energy and Minerals. Such consent is not to be unreasonably withheld or delayed.

A contractor is required to demonstrate that the third party to whom the assignment is proposed to be made is qualified, both financially and technically, and that such transfer or assignment will not adversely affect the performance of obligations under the PSA.

In practical terms, the contractor named in the PSA would enter into an agreement with the new contracting party whereby the latter would assume obligations under the PSA. The contractor is bound, in terms of the PSA, to provide the new contracting party's undertaking to this effect. The government normally requires to be provided with

copies of agreements executed and information relating to the same, including technical and financial resources available to the new contracting party.

A transfer of an interest in a PSA would be deemed to be a 'change of control' by the Tanzania Fair Competition Commission. Under the Fair Competition Act, this would constitute a merger, which is defined as taking place where an acquisition of shares, a business or other assets, whether inside or outside Tanzania, results in the change of control of a business or part of it or an asset of a business in Tanzania. A merger is to be notified to the Fair Competition Commission if it involves a turnover of assets above threshold amounts as may be established from time to time. Current threshold amounts are set at 800 million Tanzanian shillings by the Fair Competition (Threshold for Notification of a Merger) Order, 2006.

VI TAX

Upstream oil and gas operators are subject to Tanzanian taxes on income derived from petroleum operations in terms of the Income Tax Act, 2004, as amended. Other applicable statutes include the Value Added Tax Act, 1997, the East African Community Customs Management Act, 2004, and the Stamp Duty Act, 1972.

There is currently no specific tax regime for the oil and gas industry and therefore the general tax regime applies to the sector as well as any provisions relating to tax in the PSAs entered into by the contractors, the TPDC and the government of Tanzania. In 2013, amendments were made to the Income Tax Act to include specific provisions relating to petroleum operations as follows:

- a* to introduce definitions of 'petroleum agreement' to include a PSA and 'contract area' to refer to an area that is subject to a PSA;
- b* to ring-fence petroleum operations carried out by one and the same person in different petroleum areas and to cater for the determination of allowable deductions for each petroleum contract area to be treated separately; and
- c* to allow for the deduction of unrelieved losses in the case of losses incurred on petroleum operations only in calculating the person's income derived from the contract area.

Collection of taxes is administered by the Tanzania Revenue Authority in the United Republic of Tanzania. An international taxation unit has been set up within the Authority to deal with complex technical issues of an international nature, including transfer pricing issues.

According to the Income Tax Act, the current corporate income tax chargeable on income in Tanzania is 30 per cent. In calculating a person's income from any business or investment, one is to take into account allowable deductions including any expenses incurred by the person wholly and exclusively in the production of the income from the business or investment. Interest incurred under a debt obligation is considered an allowable deduction as long as it satisfies the general condition of having been incurred wholly and exclusively in the production of the income. Depreciation on assets is allowed using the straight line method. Capital deductions are allowed for oil and gas prospecting, exploration and development applying the straight line method at 20 per

cent. Under the Income Tax Act any gain on the disposal of an interest in a petroleum licence will be chargeable income for the purposes of calculating the disposing party's liability to income tax.

Withholding taxes are also levied in Tanzania. These include dividend payments and interest payments which are subject to a withholding tax of 10 per cent.

In terms of the Petroleum (Exploration and Development) Act the TPDC, as the registered holder of the development licence, is required to pay royalty in respect of petroleum obtained in the development area both on its behalf and on behalf of the contractor. The Model PSA 2013 requires the payment of 12.5 per cent royalty in kind in respect of onshore and shelf production. While for deep-sea operations, a 75 per cent royalty is payable in respect of crude oil and natural gas obtained from the contract area.

The contractor, any of its subcontractors and the TPDC are permitted to import, free of duty or other import taxes, any machinery, equipment, vehicles, materials, supplies, consumable items (other than foodstuffs and alcoholic beverages) and moveable property for the conduct of operations in Tanzania as envisaged by the PSA. If these items are no longer required in Tanzania, they may be exported by the contractor or subcontractor at a later stage without payment of export duty.

Import duty will, however, become due if the items are imported in Tanzania and then sold or transferred to a third party. In such a case, import duty shall be payable on the value of the items at the date of such sale or transfer.

Provisions relating to value added tax have also been negotiated in PSAs on a case-by-case basis.

The 2013 Model PSA contains an article on 'Additional Profits Tax' to be calculated on a development area basis annually.

VII ENVIRONMENTAL IMPACT AND DECOMMISSIONING

The Environmental Management Act, 2004 (EMA) regulates all environmental matters in Tanzania including the oil and gas sector. The EMA is based on two principles: the precautionary principle and the polluter pays principle. Additionally, regulations have been published pursuant to the EMA including the Environmental Impact Assessment and Audit Regulations, 2005. The EMA requires an environmental impact assessment to be carried out in relation to projects involving oil and gas exploration and development in view of the potential adverse environmental effects such activities may have and in order to mitigate adverse effects by taking appropriate measures. Further, environmental impact assessments are also mandatory for projects involving extraction of oil and natural gas, the construction of offshore and onshore oil and gas pipelines as well as separation, processing, handling and storage of oil and gas facilities.

Other relevant documents include the National Environmental Policy of 1997 intended to set out the country's policy for a sustainable future allowing for economic growth while respecting the environment. The Gas Policy also deals with environmental issues setting the main concerns as developing enabling conditions for supply and effective utilisation of natural gas to all market segments in an effective, reliable, safe and environmentally friendly manner.

The competent authority in all environmental matters is the Minister of Environment. He decides whether to grant environmental impact assessment certificates in terms of the EMA and whether to impose any conditions in relation to the certificates so granted. He is assisted by the National Environmental Management Council, which was set up to advise on all matters pertaining to environmental conservation and management. The Council also oversees and coordinates all matters relating to the environment.

Exploration activities involve a number of potential impacts on the Tanzanian environment. The main impacts perceived in the upstream sector include damage caused by surveys and drilling, waste generation and ways to manage, reduce, dispose of and treat waste as well as the clean-up methods for sites. These environmental issues are also recognised in the 2013 Model PSA, which sets out *ad hoc* provisions on environmental matters and requires that best international petroleum industry practices are put into operation. The 2013 Model PSA requires that appropriate insurance cover is maintained by the contractor at all times so as to cover, *inter alia*, pollution caused by petroleum operations and the cost of removing wrecks and clean-up operations following an accident in the course of petroleum operations.

Site cleaning and decommissioning obligations apply in relation to all assets and facilities used for petroleum operations. The 2013 Model PSA requires the government, the TPDC and the contractor to establish a decommissioning fund and rules for the financing of site cleaning and decommissioning within a specified period of time from commencement of commercial production with a view to restoring the area as much as possible to the condition it was in before the exploration and development activities commenced.

VIII FOREIGN INVESTMENT CONSIDERATIONS

i Establishment

When selecting the type of entity to conduct oil and gas operations, it is possible to establish a Tanzanian limited liability company or to establish a branch of a foreign corporation.

The company formation process is relatively straightforward in Tanzania. Prior to company registration, it is advisable to request the Business Registration and Licensing Authority (BRELA) to approve and reserve the proposed company name.

For company registration, a memorandum and articles of association are to be submitted together with statutory form 14a specifying the first directors, company secretary and proposed registered office address in Tanzania and form 14b confirming compliance with the Companies Act, 2002. A Tanzanian company is required to have a minimum of two directors, a company secretary and two shareholders.

Once a certificate of registration is issued, a taxpayer identification number and business licence can be obtained.

As indicated above, it is also possible for a foreign company to register a branch in Tanzania in which case a resident representative is to be appointed. By setting up a branch, an investor is effectively setting up an extension of the foreign company in Tanzania. The branch will therefore not have a separate corporate personality.

The procedure for establishing a branch office in the Tanzanian jurisdiction involves delivering the following to the Registrar of Companies:

- a* a certified copy of the charter, statutes or memorandum and articles of association of the foreign company (if the instrument is not in English then a certified translation ought to be provided);
- b* a list of directors and secretary of the foreign company;
- c* a statement of all subsisting charges created by the foreign company, not being charges consisting solely of property situated outside Tanzania;
- d* the names and addresses of one more persons resident in Tanzania authorised to accept on behalf of the foreign company service of process and any notices required to be served on it and to represent the foreign company as its permanent representative for the place of business;
- e* the full address of the registered office; and
- f* a copy of the most recent accounts and related reports of the foreign company.

In both instances registration of the company or branch will take approximately five to seven working days and a certificate evidencing registration will be issued by the Registrar of Companies.

ii Capital, labour and content restrictions

Applicable restrictions and controls are contained in the Foreign Exchange Act, 1992, regulations issued under the Act and the Bank of Tanzania's circulars. As a general rule, if a transaction is not specifically allowed under these instruments, one must assume that the Bank of Tanzania's approval is required.

PSAs may include provisions specifically dealing with foreign exchange matters. These provisions normally grant certain rights to the contractor, such as the right to open and operate local and foreign currency bank accounts in Tanzania and abroad as well as the right to enter into loan agreements outside Tanzania for the purpose of financing petroleum operations. PSA provisions may also facilitate the granting of the Bank of Tanzania's approvals where these are required such as approval for the opening and maintenance of offshore foreign currency bank accounts.

Payments relating to repatriation of capital and income to foreign shareholders in respect of direct investments are allowed. Authorising banks will demand audited accounts and authenticated tax clearance from the Tanzania Revenue Authority confirming payments of all relevant taxes.

Upon application made for exploration and development licences, contractors are to set out satisfactory proposals for the employment and training of citizens of Tanzania as required by the Petroleum (Exploration and Development) Act. Currently, local content requirements emerge from the PSAs in *ad hoc* provisions. These provisions would generally require a contractor to maximise use of Tanzanian resources by:

- a* giving preference to Tanzanian goods, services and materials of acceptable quality and price when compared to non-Tanzanian goods, services and materials; and
- b* making maximum use of Tanzanian service companies where the services provided are of a comparable standard and competitive when compared to those provided elsewhere.

Contractors, together with the TPDC, are also to establish appropriate tender procedures to give effect to the above in accordance with Tanzanian and international standards and procedures, while ensuring that subcontractors are also bound by the same requirements in relation to Tanzanian resources. The 2013 Model PSA expands significantly on local content requirements. It includes provisions for compliance by contractors with the local content policy as applicable from time to time, reserving unskilled manpower for Tanzanian nationals only, ensuring that subcontracts are scoped as far as economically feasible and practical to match the capability of local enterprises and manage any risks arising from such participation.

Contractors are also required to commit to employing Tanzanian citizens having appropriate qualifications to the maximum extent possible and to commit to a specified minimum amount to be invested annually for training of Tanzanian citizens. The 2013 Model PSA sets this minimum commitment at US\$500,000 annually for each year of the exploration licence, including extensions thereto. This figure is non-negotiable according to the request for applications for exploration in the seven offshore locks and Lake Tanganyika North Block released in October 2013.

The Gas Policy recognises that Tanzania is relatively new to the oil and gas sector and hence the need on the part of the government and its authorities as well as the contractors to invest in education and training for Tanzanians keen to work in the sector and to prioritise capacity building.

Foreign nationals intending to reside in Tanzania for business or any other purpose are required to obtain a permit in terms of the Immigration Act. There are three types of permit:

- a* Class A permit for self-employed individuals who are owners or shareholders in the business;
- b* Class B permit for employment with a local company; and
- c* Class C permit for individuals in Tanzania for other purposes such as research, missionary work and voluntary work.

The Director for Immigration Services is responsible for applications for the Class A and C permits while applications for Class b permits are the responsibility of the Director of Immigration Services and the Labour Commissioner who makes a positive or negative recommendation regarding the applicant. Evidence of the applicant's experience and qualifications must be given when applying for a permit. The 2008 Model PSA requires the TPDC to assist the contractor with the obtaining of necessary work permits and approvals for expatriate personnel.

iii Anti-corruption

The Petroleum (Exploration and Development) Act contains provisions to avoid conflicts of interest and ensure transparency in dealings by public officials by:

- a* declaring as void any instrument that purports to grant a licence for exploration or development to an individual acting in his or her private capacity who is a public officer;
- b* restricting public officers from acquiring or attempting to acquire or hold any licence or an interest in a licence; and

- c* restricting public officers from acquiring or attempting to acquire or hold a share in a company or a corporation carrying on exploration or development operations.

The Act also contains a deeming provision that effectively looks through acquisition or holding of shares in companies or corporations carrying on exploration or development operations by descendants or spouses of public officers. By doing so, the Act considers such an acquisition by a member of the family to be an acquisition by the public officer.

Any public officer found responsible for contravening these provisions of the Act will be guilty of an offence and may be liable to a fine or imprisonment not exceeding 12 months, or both, depending on the severity of the offence.

Tanzania has also enacted legislation to combat corruption and implement internationally accepted standards on public procurement.

The main law governing anti-corrupt practices is the Prevention and Combating of Corruption Act, 2007 (PCCA). The PCCA establishes the Prevention and Combating of Corruption Bureau, granting it vast investigative powers in cases where corruption is alleged or suspected. The PCCA also deals with the making of orders, forfeiture of assets and institution of criminal proceedings.

Public procurement legislation has also been enacted in the form of the Public Procurement Act, 2004, and regulations published pursuant to this Act, which establish public procurement principles, the methods of procurement and processes as well as the creation and operation of the Public Procurement Regulatory Authority. The Public Procurement Act and its regulations set out the form of proposal requested to be used by the TPDC when inviting applicants to bid for blocks. This form of request requires the government to reject proposals for award if the recommended bidder has engaged in corrupt or fraudulent practices and to exclude it from being awarded a publicly financed contract for a period of 10 years.

Finally it is pertinent to note that the major exploration and development companies in Tanzania have their own strict policies and programmes governing anti-corruption, bribery and trading in influence in addition to having to comply with anti-corruption rules in their country of origin.

IX CURRENT DEVELOPMENTS

The government of Tanzania, through the TPDC, has officially opened a fourth licensing round at the 2nd Tanzania Oil and Gas Conference and Licensing Round Launch held between 23 and 25 October 2013 in Dar es Salaam. A total of eight blocks consisting of seven deep-sea offshore blocks and one onshore block will be made available during this licensing round. The deep-sea blocks have an average size of 3,000km² and a depth of between 2,000 and 3,000 metres. The onshore block is located in North Lake Tanganyika on Tanzania's western border. Bids will be opened on 15 May 2014. The government of Tanzania has demarcated and reserved two deep-sea blocks which TPDC will develop with a competitively sourced strategic partner in the near future.

Work on the enactment of a Gas Act and adoption of a Gas Utilisation Master Plan (GUMP) is expected to continue in 2014 as these will form the basis of Tanzania's

legal and policy framework for the gas sector. The Gas Act is expected to deal with the midstream and downstream industry such as licensing, tariff structure, rates and charges, quality and standards, health and safety issues, third-party access to common infrastructure and services, revenue management and related aspects of the administration and regulation of the natural gas industry.

The GUMP will also be key to the legal and policy framework as it will determine the most efficient and beneficial way of supply and utilisation of onshore and offshore finds. Currently the Gas Policy recognises that the main incentive for international oil and gas companies is that of developing natural gas reserves so as to export the same to other markets. Yet it also recognises that a reasonable share of the country's gas resources ought to be used in the domestic market. There are a number of clear benefits for Tanzania to switch to using natural gas to replace current petroleum usage, including environmental benefits, cost benefits and supply benefits.

Plans for the construction of an LNG terminal are also expected to materialise in 2014. The terminal is expected to cost in the region of US\$10 billion and proposals are being submitted to the government for the project in particular the optimal location of the plant in view of the challenging geography and varying depths of up to 3,000 metres. The Gas Policy states that the government will seek to ensure that all LNG and other processing facilities are located onshore and that it will ensure profit maximisation and efficient trading of the gas products for regional and international markets.

Appendix 1

ABOUT THE AUTHORS

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Dr Wilbert Kapinga is specialised in corporate law, finance law, banking, privatisation, telecommunications law, infrastructure transactions and competition law and has over 20 years' experience of transactions and projects in these areas. He has also been involved in significant gas commercialisation transactions and also a wide range of regulatory matters for petroleum and electric utilities and other facilities built through private finance initiatives.

Dr Kapinga is fluent in Kiswahili and English. He has a bachelor of laws with honours and a master's in law from the University of Dar es Salaam. He also holds a master's in law from Columbia University, New York and a doctorate from Northeastern University in Boston. He was formerly senior lecturer and dean of the Faculty of Law at the University of Dar es Salaam. Since 2002, he has been consistently ranked Band 1 by international law directories such as *IFLR1000* and *Chambers Global* and described as the leading corporate lawyer in Tanzania. His work is also recognised by *The International Who's Who of Project Finance Lawyers* (2010 and 2011) and *The International Who's Who of Banking Lawyers* (2012).

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Angela specialises in the oil and gas, corporate, banking and finance, capital markets, investment funds, tax and insurance sectors, with a primary focus on the oil and gas and financial services industries.

She is actively involved in asset transfers, joint ventures, entity set up and structuring, regulatory and compliance and her clients include energy companies and financial services companies.

Angela was admitted to the bar in Valletta, Malta, in 2003. She graduated as a doctor of laws (LLD) from the University of Malta in 2002 and completed a master's degree in financial services in 2004.

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