



Conducting oil and gas activities in Tanzania

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Laws and regulations

List the main legislation governing petroleum exploration and production activity in your country.

There are several pieces of legislation applicable to the petroleum sector in Tanzania:

1. Petroleum Act 2015 (the “**Act**”);
2. Energy and Water Utilities Regulatory Authority Act, Cap 414 (“**EWURA Act**”);
3. National Natural Gas Policy 2013;
4. Local Content Policy for Oil and Gas Industry 2014;
5. National Energy Policy draft 2015.

Identify the Government, regulatory and/or oversight bodies principally responsible for regulating oil and gas activities.

1. *The Minister of Energy and Minerals (“**MEM**”) has primary responsibility for the development of the petroleum sector and MEM grants licences for upstream exploration and development.*
2. *The Commissioner for Energy and Petroleum Affairs (the “**Commissioner**”) regulates upstream oil and gas activities.*
3. Currently as a matter of policy and general practice, all exploration and development licences are issued to the State owned entity, the Tanzania Petroleum Development Corporation (“**TPDC**”), which directly regulates oil and gas activities. TPDC then grants exclusive rights to oil and gas companies by entering into a production sharing agreements (“**PSA**”) with the companies (“**Contractors**”), based on a model agreement.
4. Under the Act, the TPDC has been designated the National Oil Company for Tanzania whose major role is to undertake Tanzania’s commercial aspects of the petroleum in the upstream, midstream and downstream operations and participating interests of the Government in the petroleum and natural gas agreements.

5. Downstream petroleum activities are regulated by the Energy and Water Utilities Regulatory Authority (“**EWURA**”).

6. Under the Act, Upstream petroleum activities are regulated by the Petroleum Upstream Regulatory Authority (“**PURA**”) which is established as a body corporate responsible for: (1) regulating and monitoring petroleum upstream sub sector for mainland Tanzania; and (2) regulating and monitoring of: (a) the geophysical exploration and development of petroleum; (b) construction and operation of wells; (c) production of petroleum; (d) construction, operating and use of storage reservoirs; and (e) construction and operation of pipelines and other special infrastructure for petroleum. Moreover, PURA will act as a complimentary and advisory organ to the Commissioner in matters pertaining to oil and gas management and issuance of licences i.e. exploration licences and development licence to the TPDC which in turn enters into PSAs with both local and foreign investors.

7. The Oil and Gas Bureau is established as a department constituted within the Office of the President whose main responsibility is to advise the Cabinet on strategic matters relating to oil and gas economy.

Entry requirements

What are the registration requirements for becoming a licensee of an oil and gas production sharing contract/licence/concession (“Licence”) in your country? For instance, is it necessary to incorporate a subsidiary, or register a branch?

The Act provides that TPDC may, subject to the Minister’s consent and on advice by PURA, enter into partnership with a Tanzanian or a foreign entity through an open tendering process or a direct award of a block. Further the Act requires a Contractor to be a body corporate registered under the Companies Act or any other written

law and such entity be of recognised capacity, technical knowledge and financial capability.

In order to satisfy this requirement, the Contractor may either incorporate a subsidiary or register a branch in Tanzania, and under the 2013 model production sharing agreement (“**MPSA 2013**”), the licensee is required to establish and maintain an office in Tanzania within 30 days of the effective date of a PSA, and designate a representative residing in Tanzania who shall have full authority to represent the Contractor on all PSA related matters.

Are there any foreign investment approval requirements or restrictions when commencing business in your country (e.g. a minimum local shareholding in the entity undertaking the activity)?

The Act provides for the minimum local shareholding requirement in the petroleum sector and that in granting licence EWURA shall take into account participation of Tanzanians including local companies with not less than 25% participating shares in the business (Section 132(j)).

Foreign nationals and foreign companies are however restricted from owning land in Tanzania unless the land is held for investment purposes. A Tanzanian company wholly or majority-owned by foreigners can only hold land title if it holds a Certificate of Incentives issued by the Tanzania Investment Centre.

There are also registration requirements in relation to remittances of investment returns, or payments of principal, interest or premiums on foreign loans, overdrafts or financial facilities with terms exceeding 365 days. Such transactions are subject to notification and record keeping requirements by the local remitting banks and financial institutions.

Licensing

Identify the main fiscal/legal model granting rights to explore and produce oil and gas.

Legal

Under the Act, all title and control over petroleum on any land in Tanzania vests with the State.

The Act allows MEM on behalf of the government to enter into agreements with TPDC and any company as its partner for the purpose of granting the company licences for the exploration and production of petroleum.

As a matter of policy and general practice, all licences for exploration and production are issued to TPDC instead of the Contractor. TPDC then authorises the Contractor under the PSA, to carry out the petroleum operations on its behalf, by granting it exclusive rights over an exploration block.

Fiscal

Both the Act, and the MPSA 2013, and broadly all PSAs, provide for the taxation of revenues generated from petroleum operations. The taxes levied on a Contractor are:

1. **Corporation tax** – on all income derived from the petroleum operations. The current rate is 30%.
2. **Royalties** – on any petroleum that is recovered from a development area. The Contractor can discharge this obligation by delivering to the Government 12.5% for onshore/shelf areas and 7.5% for offshore of total production. The royalty must be paid prior to recovering any expenses from the oil or gas.
3. **Licence charge** – an annual charge payable on the grant of exploration and development licences. The charge subsists until the licence is terminated.

The annual charge for an exploration licence is:

- (i) USD\$50 per square km for the initial exploration period;
- (ii) USD\$100 per square km for the first extension period; and
- (iii) USD\$200 per square km for the second extension period.

The annual charge for a development licence is USD\$500 per square km.

4. **Signing bonus** – the MPSA 2013 introduced a signing bonus of not less than USD\$2.5 million which is payable by the Contractor on the signing of the PSA.
5. **Production bonus** - a bonus of not less than USD\$5 million is also payable by the Contractor to the government on commencement of production. Any subsequent development licenses in the contract area will be subject to additional production bonuses of not less than USD\$5 million.

Please outline the procedure to apply to the Government for an interest in a Licence in your country.

Please include details of cost and timing for obtaining such interest.

The procedure for applying for an interest in a licence is by way of a bidding process. The Government announces, through TPDC, a bidding round for a number of offshore or onshore blocks.

A well data package in relation to the bidding blocks is available to interested parties at a cost.

Applications must include a non-refundable fee with their bid which will be valid for a minimum of 2 months. The bids will be considered by TPDC taking into consideration the technical and financial capabilities of the applicants.

Recommendations for successful bids will be made to the MEM, who will award the licence to TPDC, on the execution of the PSA.

What is the customary duration of the relevant Licence?

MEM has the right to grant licences for exploration and development.

Exploration licence

Granted for an initial term of 4 years. The duration of the licence can be extended for a further 2 terms as follows: (i) a first extension lasting 4 years; and (ii) a second extension lasting a further 3 years.

The exploration licence may then be extended for an additional term not exceeding 3 years if: (i) petroleum is discovered within a block where the relevant exploration licence has at least 2 years left on its second extension; and (ii) MEM has made a declaration of location, i.e. it has declared the discovery of oil or gas in the block.

Development licence

Granted for a period of 25 years, but can be extended for a further term not exceeding 20 years. An extension of the licence will only be permitted if it is a reasonable period within which to recover the maximum amount of petroleum.

Does the Government have any right to participate and be carried in the PSA? If so, please describe the extent of this entitlement.

Is there any mechanism for recovery of carry costs?

TPDC has the right to participate in the development of a block by contributing 25% of the contract expenses. Such expenses cover exploration, development, operations, services and general administrative costs.

If TPDC fails to pay its share of the contract expenses, the Contractor is required to advance a loan to TPDC to cover those unpaid expenses. Any unpaid expenses attract interest at the rate of LIBOR plus 1%.

The Contractor must carry TPDC's share of any unpaid development or production expenses and it is entitled to recover these expenses from TPDC's share of the cost of oil or gas.

Does the Government have any right to participate in the operatorship of the Licence?

TPDC has the right to participate in the operatorship of the development licence by entering into an operatorship agreement with the Contractor. The agreement should include provisions:

1. for the creation of a joint operating committee where both parties are equally represented;
2. rendering TPDC liable to contribute a proportion of production costs; and
3. acknowledging that TPDC's failure to pay its share of development and/or production expenses will result in the Contractor carrying TPDC's share of the costs, with the Contractor having the right to recover the costs out of TPDC's cost oil / gas.

Assignment

What Government and/or regulatory approvals are required for the acquisition of oil and gas interests held under a PSA (whether by asset or corporate sale/change of control)?

If any, what are the timing requirements and costs of obtaining such Government and/or regulatory approvals?

Ministry of Energy and Minerals

Prior written approval is required from MEM for any direct or indirect assignment and transfer of rights in oil and gas interests under a PSA to a third party including a party with the Contractor. The Contractor must apply for consent at least 90 calendar days before the proposed effective date of the transfer, and any assignment without approval shall be deemed to be null and void.

MEM may impose conditions on the grant of an approval, including but not limited to:

1. the assignee providing an unconditional undertaking to assume all of the assigned obligations of the Contractor;
2. the provision of a deed of assignment to MEM detailing the main conditions and liabilities that the assignee will assume; and
3. details of the technical, industrial and financial resources available to the incoming Contractor or all of the Contractors where the assignment or transfer involves more than one incoming party.

An assignment or transfer of PSA interests will be subject to the relevant tax laws in Tanzania, including capital gains tax and stamp duty, and will be subject to an assignment fee as set out in the PSA if the assignment or transfer is made to a non-affiliated entity of the Contractor. The MPSA 2013 contains provisions relating to this assignment fee.

Fair Competition Commission

An acquisition of shares, business or other assets, whether inside or outside Tanzania, resulting in the change of control of a business, part of a business or an asset of a business in Tanzania is considered a merger under the Fair Competition Act 2003.

A person that intends to acquire control through a merger must notify the Fair Competition Commission ("FCC") of the intended merger by filing a notification, if the merger involves turnover or assets above the threshold amount of TZS 800 million (about USD\$365,700 as at February 2016). Whether the threshold amount is reached is calculated based on the combined market value or assets of the merging firms.

"Change of control" is very widely interpreted by the FCC and therefore any transfer of shares or assets as a result of the assignment of interests under a PSA is considered as notifiable to the FCC.

Commissioner for Income Tax

As of December 2014, all assignments or farm out agreements are treated for income tax purposes as realisations of an investment, and any gain from the realisation is taxable as investment income. The assignor is required to obtain a tax clearance certificate from the Tanzania Revenue Authority, and MEM has been directed that its consent to an assignment of PSA interests must be subject to the provision of this tax clearance certificate.

Are there any pre-emptive rights reserved to any Government entities in the event of a proposed assignment of an interest held under a PSA? If so, what are the terms upon which such entities are allowed to acquire the interest?

TPDC has the right of first refusal in the event of a proposed assignment of a PSA interest.

The Contractor must first notify TPDC of the price and other key terms and conditions of the proposed assignment, and TPDC is required to notify the Contractor within 60 days after receipt of the notification if it intends to exercise its right of first refusal. If TPDC does not elect to exercise its right, the right shall pass to any TPDC affiliate.

Economic Support

Are parental guarantees or other economic supports commonly required to be provided by oil and gas companies?

The Contractor must provide particulars of financial resources available to it for the exploration activities. Evidence of economic support can be in the form of equity, credit facilities or guarantees.

Are security deposits required in respect of work commitments or otherwise?

The Contractor is required to provide to the MEM, upon commencement of each term of the exploration period and upon the approval being granted for an exploration work programme or for any appraisal work programme, an unconditional, irrevocable, on-demand guarantee from a bank that is in a form acceptable to the MEM.

The guarantee shall be for an amount equal to the minimum expenditure committed for the relevant work programme or period, or in the case of any obligation under the PSA other than a minimum work programme, the sum of USD\$400,000.

MEM has discretion under the MPSA 2013 to require the Contractor to deliver to it, on the effective date, an unconditional and irrevocable performance guarantee, in a form prescribed under the MPSA 2013, from the Contractor's parent company.

Abandonment and Decommissioning

What abandonment regime is in place? Are security deposits required in respect of future decommissioning liabilities?

The Act and MPSA 2013 contain provisions governing the abandonment and decommissioning of a well.

The Contractor is required to notify the MEM if it intends to abandon any well. Closure or plugging of such well can only take place with prior written consent of the MEM, who will prescribe the manner for closing the well.

Further, a licence holder is required to submit a decommissioning plan to PURA before a petroleum production licence or a specific licence to install and operate facilities expires or is surrendered, or before the use of a facility is terminated permanently. The decommissioning plan should be submitted to PURA at least 5 years before the time when the use of a facility is expected to be terminated unless PURA directs otherwise.

Under the Act, the decommissioning plan shall contain proposals for continued production or shut down of production, decommissioning of facilities and any other relevant information. The decommissioning of facilities may constitute further use of facilities for petroleum activities, or other uses, and complete or part removal and disposal or abandonment (Section 187 of the Act),

A decommissioning fund is also established for each development area or for other facilities operated in relation to a license or permit under this Act for the purpose of costs related to implement the decommissioning plan. The decommissioning fund shall be used for implementation of activities approved in the decommissioning plan (Section 188 of the Act).

The Contractor is required under the draft PSA to perform all necessary abandonment activities prior to relinquishing any contract area or block, and is required to observe the Environmental Management Act 2004 ("EM Act") and, more generally, best international petroleum industry practices.

1. All projects within the petroleum sector are required under the EM Act to conduct an environmental impact assessment. Following the assessment, a decommissioning report setting out how the Contractor intends to deal with impacts on the environment must be submitted to the National Environmental Management Council. Investors engaging in activities or processes that threaten the environment, such as oil and gas field exploration and development, must provide additional performance bonds.
2. The Contractor must, within 2 years of the commencement of commercial production, enter into an agreement with the Government and TPDC to establish a site clean-up, decommissioning and abandonment cost reserve fund and to address the administration and utilisation of funds deducted from cost oil / gas for decommissioning and site clean-up.
3. The Contractor's decommissioning obligation continues after termination of the PSA, and the Contractor shall have a secondary liability for financial obligations for the cost of implementing site clean-up, decommissioning and abandonment of installations, sites, petroleum facilities and wells, which existed at the time of the assignment, and provide adequate security for such secondary liability.

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