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Egypt

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The oil and gas sector plays an integral role in attracting foreign investment. Moreover, due to its geographical location the Egyptian government has announced plans to expand the oil and gas sector in the upcoming years and is taking steps to stimulate the growth of oil and gas exploration, deregulating the gas sector and LNG export.

1. The legislative and regulatory framework

Article 32 of the Egyptian Constitution enacted in January 2014 as amended in 2019, addresses the regulation of the exploitation of natural resources. All minerals, including solid, liquid and gaseous resources, existing in mines and quarries in Egypt, including the territorial waters, and in the seabed subject to its jurisdiction and extending beyond the territorial waters, are the property of the state. Accordingly, only the state can grant rights for exploitation of petroleum resources under a concession agreement. Additionally, Article 32 limits the duration of a concession for the exploitation of natural resources to a period not exceeding 30 years and requires that it must be granted by virtue of a law as follows:

> *… granting the right to exploit natural resources or a concession to a public utility shall take place by law for a period not exceeding 30 years. Granting the right to exploit quarries and small mines and salterns, or granting a concession to a public utility shall take place for a period not exceeding 15 years based on a law. The law sets the provisions for disposing of state private property, and the rules and procedures regulating such.*[1]

Furthermore, the oil and gas sector is governed by the following key legislation:

- Law 66/1953 on Mines and Quarries (the Fuel Raw Materials Law); and Ministerial Decree 758/1972, promulgating the executive regulations of the Fuel Raw Materials Law.
- Law 86/1956 on mining and quarrying (the Mining and Quarrying Law);
- Law 61/1958 on the incentives granted for investments relating to natural resources;
- Law 217/1980 concerning natural gas;
- Law 198/2014 concerning mineral resources, raw materials of mines, quarries and salt pans (the Mineral Resources Law); and
- Law 196/2017 on regulating gas market activities (the Gas Market Law) and all their subsequent amendments.

1 Egyptian Constitution No 5/2014, *Official Gazette* 3-bis(a), 18 January 2014.

The competent authorities regulating the upstream petroleum sector include the Ministry of Petroleum (MoP), the Egyptian Mineral Resources Authority (EMRA), the Egyptian General Petroleum Corporation (EGPC), the Egyptian Natural Gas Holding Company (EGAS) or Ganoub El-Wadi Holding (GANOPE), the Egyptian Petrochemicals Holding Company (ECHE) and the Parliament. The responsibility of each entity can be divided as follows:

- MoP is the governmental authority responsible for the regulation and the supervision of all the activities of the oil and gas sector acting mainly through EGPC, EGAS and GANOPE;
- EMRA is responsible for the issuance of licences and authorisations needed for exploitation of minerals;
- EGPC is an entity created by Law 135/1956 as amended by Law 167/1958 and is responsible for the exploration, production, transportation and refining of petroleum;
- EGAS is a legal entity created by Cabinet Decree 1009/2001 as amended by prime ministerial Decree 1580/2003 and focuses on all natural gas-related activities;
- GANOPE is established by Cabinet Decree 1755/2002 to supervise all petroleum activities under the latitude line 28 mainly in the Upper Egypt region;
- ECHE focuses mainly on petrochemical related activities; and
- the Parliament issues as a law every concession agreement entered into for the conduct of upstream activities as stated in Article 32 of the constitution.

2. Overview of the upstream oil and gas regime and bidding process in Egypt

The Egyptian government announces a bidding process for the exploration of oil and gas through the MoP and a state-controlled entity. This process is called a 'bid round' and is typically managed and assessed by one of three state-controlled entities being EGPC, EGAS and GANOPE.

Potential concessionaires wishing to participate in the bidding process may enter solely or through a consortium. Applicants are required to submit documented evidence of financial and technical capabilities to fulfil oil and gas-related operations in order to be granted the concession.[2] Once a bidder has been selected in accordance with the rules of each bid round, a law is promulgated authorising the MoP – as the representative of the Egyptian government – to enter into a concession agreement with the relevant bidder and the relevant state-controlled entity. The said law attaches the form of the concession agreement as an annex and provides that the concession agreement shall have the force of a law. Once the law is promulgated, the concession agreement is executed by its parties.

Having been given the force of a law, concession agreements are the cornerstone of the relationship between the parties (ie, the relevant state-controlled entity, the

2 The technical qualifications include, *inter alia*, previous exploration experiences and activities worldwide such as development projects, gas and oil production, in addition to the company's annual report.

MoP and the concessionaire, or the 'contractor'). With each bid round announced, a model concession agreement is issued by the State Council; these model agreements are subject to periodic review. Accordingly, while most concession agreements contain similar provisions, the form issued in each bid round may contain variations from older models.

3. Overview of concession agreements

The provisions of concession agreements supersede the terms of laws that contradict its provisions or that are expressly excluded from applying to the concession agreement.[3] Concession agreements provide a contractor with an exploration period whereby certain financial and technical commitments are required to be carried out. This exploration period may be extended for certain periods. In the event of commercial discovery, a development lease is granted to the contractor in respect of the area subject to development after the approval of the MoP.

Concession agreements also provide that after an area has been converted into a development lease (ie, after commercial discovery) a joint venture company between the contractor and the relevant state-owned entity comes into existence to carry out operations. The joint venture or joint venture operating company merely acts as an agent of the contractor and the relevant state-controlled entity in relation to their respective obligations under the concession agreement. Hence, a joint venture company may not make profits and is prohibited by virtue of its charter from owning properties used or obtained in connection with the concession agreement or the petroleum produced. Concession agreements typically allocate 50% of the joint venture company's capital to the contractor and 50% to the relevant state-controlled entity. A relatively new practice under model concession agreements requires Tharwa, a company affiliated with the petroleum sector, a state-owned or controlled entity, to be a party to the concession agreement and shall obtain 10% of the contractor's share in the concession agreement as a free carry share without incurring any burdens or costs until the commercial discovery.[4]

3.1 Financial arrangements

Concession agreements generally include the following financial arrangements:

- minimum expenditure during both the prospecting and exploitation periods of the concession;
- royalties payable to the Egyptian government in cash or in kind (10%)[5] for any quantity of oil or gas produced and saved. Where the contractor disposes

3 By way of an example, the Fuel Raw Materials Law, which contains provisions governing the granting of concessions and rules regarding the rights and duties of contractors conducting oil and gas activities, is only applicable to the parties of the concession agreement to the extent that it does not contradict the terms of the concession agreement. Concession agreements typically also expressly exclude, among other legislation, the application of Law 159 of 1981, which is the general law applicable in relation to companies in Egypt from applying to the contractor in connection with the concession agreement.

4 Tharwa was established in 2004 as Egypt's first joint stock petroleum company, 100% nationally owned, to execute an upstream operation with two main goals of E&P and petroleum services.

5 The contractor will not be committed to pay this royalty as it shall be borne and paid by the three state-controlled entities (from its share in the production) and the payment of this royalty by EGPC/EGAS/GANOPE shall not be considered income attributable to the contractor.

all or part of its share of production sharing gas and excess cost recovery gas, by itself to the local market, the Gas Market Law shall apply;[6]

- mandatory and voluntary relinquishment of certain concession areas under certain conditions;
- a production sharing model whereby the production is shared according to certain percentages after cost recovery by the contractor from the petroleum produced of up to a certain percentage;
- recovery of costs and expenses (usually 35% to 40%);
- training bonuses for the training of EGPC/EGAS/GANOPE employees;
- schedule of oil and gas production sharing between EGPC/EGAS/GANOPE and the contractor company depending on the amounts produced and saved;
- any signing, assignment or applicable production bonus;
- local content requirements on material, equipment, machinery, consumables and contractors/subcontractors, limited to a price differential of 10% above the international provider; and
- EGPC/EGAS/GANOPE pays and discharges, in the name of the contractor company, its Egyptian income tax at the rate of 40.55% out of EGPC/EGAS/GANOPE's share of the petroleum produced and saved.

The contractor, the joint venture operating company and the three state-controlled entities are exempted from custom duties and effective taxes with respect to the importation of machinery, equipment and consumable items required for the purpose of exploration and exploitation activities under concession agreements. These exemptions shall not be granted if there is a local substitution with the same or similar quality that can be delivered in Egypt within a reasonable timeframe.

The three state-controlled entities, in addition to the contractor and their respective buyers, shall have the right to freely export the petroleum produced pursuant to the concession agreement and will be exempted from any duties or taxes on the export of petroleum produced under the concession agreement.

3.2 Assignment and change of control

Concession agreements require the prior written consent of the government in case of assignment of any rights, privileges, duties, or obligations or leased to a third party, in whole or in part, directly or indirectly.[7] Concession agreements generally provide pre-emption rights in favour of EGPC/EGAS/GANOPE, hence, if the contractor wishes to assign all or some of its interest under the concession agreement

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6 Given the relatively recent enactment of the Gas Market Law, the concession agreement provides for an obligation to the effect that the contractor shall be subject to said law in the event that it wishes to dispose of its share of gas to the local market, and thus there are licensing requirements. Given that there were no licensing requirements on contractors for gas sales to the government companies (EGAS/EGPC/GANOPE) under older concession agreements, it is not clear whether this licensing requirement under the Gas Market Law will be required if the contractor disposes of gas to the government affiliated companies as well or if the gas sales are made only to private third parties in the local market.

7 'Indirect assignment' shall mean, for instance, any sale, purchase, transfer of stocks, capital or assets or any other action that would change the control of the contractor on its share in the company's capital.

to a third party, it should relay the terms and conditions of such assignment to EGPC/EGAS/GANOPE, which shall have the right to acquire the interest subject to assignment from the contractor. However, EGPC/EGAS/GANOPE rarely practise their pre-emption right.

A request for approval of an assignment must be submitted to the government demonstrating that:

- the current concession holder and assignor has satisfactorily fulfilled all its obligations pursuant to the concession agreement to date, particularly with respect to any rental, royalty, duties, etc, payable;
- the intended assignee has the technical and financial capability to carry out all duties and obligations under the concession agreement;
- it shall warrant and represent that it shall abide with all terms and conditions of the concession agreement, as amended;
- the area being assigned is actually operational through at least one oil production well; and
- the final terms of the assignment between assignor and assignee are agreed.

The contractor shall pay to EGPC/EGAS/GANOPE a fixed sum in the case of an assignment to an affiliate of the contractor. In contrast, in the case of assignment to any third party during the exploration period, the contractor shall pay to EGPC/EGAS/GANOPE as an assignment bonus, the sum equivalent to 10% valued in US dollars of the total financial commitment of the then current exploration period during which the assignment is made and according to the assigned percentage.

As for the assignment to any third party during the development period or its extensions, a relatively new practice under model concession agreements requires the contractor to pay to EGPC/EGAS/GANOPE as an assignment bonus, a sum equivalent to 10%, valued in US dollars, of the value of each assignment deal, which could be, for example:

- the financial value to be paid by the assignee to the assignor; or
- the financial commitments for technical programmes/development plans; or
- the financial value of the reserves to be swapped between the assignor and the assignee from the development lease areas; or
- the financial value of shares and/or stocks to be exchanged between the assignor and the assignee; or
- any other type of deals to be declared.

This new approach may cause uncertainty in its application, especially with regard to the process for calculating the above values. Also, in terms of confidentiality, the assignee and/or assignor may be reluctant to share classified information which is necessary for the calculation of the percentage.

3.3 Termination and revocation of concession

The concession agreement is terminated by the lapse of its terms. Additionally, the government has the right to cancel concession agreements by order of a presidential decree, if the contractor performs any of the following:

- knowingly submits false statements to the government which were of a material consideration for the execution of the concession agreement;
- assigns any interest contrary to the assignment provisions in the concession agreement;
- is declared bankrupt by a competent court;
- does not comply with a final decision reached as the result of court or arbitration proceedings;
- intentionally extracts any mineral not authorised by the concession agreement or without the authorisation of the government; or
- commits any material breach of a concession agreement or of the provisions of the Fuel Raw Materials Law.

In such case, the government shall give the contractor 90 days' written notice to remedy and remove such cause. If, at the end of the 90-day notice period, such cause has not been remedied and removed, the concession may be terminated by order of a presidential decree.

3.4 Contractor corporate setup

For the purpose of service of notices under concession agreements, contractors are required to maintain an office in Egypt. Contractors must also entrust a technically competent general manager and a deputy general manager to: (i) manage the exploration activities; and (ii) deal with the representatives of the Egyptian government and the relevant state-controlled entity. In this respect, a contractor who enters into concession agreements establishes a branch of a foreign company.

It is worth noting that although concession agreements are entered into between three parties (ie, the MoP, the state-controlled entity and the contractor), service of notices under concession agreements is typically to be made from the contractor to the relevant state-controlled entity. Therefore, in practice, the relevant state-controlled entity is the main party that the contractor interfaces with formally rather than directly with the MoP in relation to the concession agreements. If there is more than one contractor in a concession agreement, the contractors are jointly liable under the concession agreements.

3.5 Dispute resolution

In model concession agreements, the rules of dispute resolution are usually as follows, any dispute between the MoP and a contractor and/or the three state-controlled entities shall be settled by the competent Egyptian courts. In contrast, disputes between a contractor and EGPC/EGAS/GANOPE shall be settled by arbitration in accordance with the rules of arbitration of the Cairo Regional Centre for International Commercial Arbitration (CRCICA). In the event of any conflict between Egyptian laws and the concession agreements, the provisions of the concession shall prevail. If CRCICA was unsuccessful for any reason, EGPC/EGAS/GANOPE and the contractor may agree that the arbitration be conducted on an *ad hoc* basis in accordance with the UNICITRAL rules of arbitration.

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