The Oil and Gas Law Review

Editor
Christopher B Strong

Law Business Research

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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
London
November 2013

Chapter 15

PORTUGAL

Rui Mayer, Diogo Ortigão Ramos, Ana Isabel Marques and Bruno Neves de Sousa[1]

I INTRODUCTION

Although the first oil and gas exploration and production operations in Portugal were carried out in the early years of the 20th century, with a few wells drilled in the 1970s having produced small quantities of crude oil in drill stem tests, the petroleum potential of the country, including its exclusive economic area, is still under-evaluated, with an average of 2.4 wells drilled per 1,000 square kilometres,[2] and no reserves proved.

Major efforts to identify commercial reserves were made in the 1970s and 1980s, following the 'oil shocks' of the time and the discovery of crude oil in the Grand Banks, of which the areas offshore Portugal are seen as being a geological continuation. However, the results of the efforts made were not encouraging, and the industry's interest in the country declined.

In 1994 the government issued new legislation for the sector, simplifying procedures and introducing more favourable fiscal terms aimed at reigniting the interest of the international companies and attracting new investment. In line with the classical western European tradition, this new legislation continued to follow the concession model, but instituted more flexible terms for the basic framework of the contracts. For instance:

a the definition of concession areas is based on a small unit ('lot') measuring 6' longitude by 5' latitude, it being left to the concessionnaire to apply for the area it wants to work, grouping these 'lots' into 'blocks' that can have up to 16 contiguous 'lots';

b the duration of the exploration period may last up to 10 years;

1 Rui Mayer and Diogo Ortigão Ramos are partners, Ana Isabel Marques is a senior associate and Bruno Neves de Sousa is an associate at Cuatrecasas, Gonçalves Pereira.

2 See www.dgeg.pt/dpep/pt/history_pt.htm.

c production rights, following a discovery and final delineation of an oilfiled, are granted for a minimum of 25 years, which can be extended to 40 years; and

d minimum exploration commitment requirements are of one well per block from the fourth year, with all the rest being left for agreement in the negotiations.

These limits are not mandatory for the deep offshore areas until specific regulation is published (which is not expected anytime soon). As a result, companies that are interested in exploring such areas will enjoy even greater flexibility in submitting their proposals, as an incentive for attracting interest.

Shortly after the publication of the new law, and in preparation for a public tender for the award of exploration and production rights, the authorities contracted TGS-NOPEC to perform a seismic and gravimetric study of the deep offshore areas, which only then became available to exploration as a consequence of technological advances. The tender was organised in 2002, leading to the award, in 2005, of one concession covering two deep offshore blocks. Later, new rights were awarded following direct negotiations with several companies that approached the authorities. Onshore, one company has been active since 2001, having registered 'strong indications' of gas in two wells in the Alcobaça region. Oil shows have also been registered, but production tests were not conclusive.

As of 30 June 2013, exploration activities were being pursued under five preliminary evaluation licences (all covering areas off the southern coast) and 17 concession contracts – two relating to onshore/offshore areas, six wholly onshore and nine deep offshore.

The government is keen on welcoming new investment in oil exploration but, understandably, does not consider the sector as being a major priority for public policy and spending. The authorities' attitude has been relatively passive, responding to the initiative of interested companies rather that embarking on promotion. This, coupled with the perception that the country presents a high exploration risk, has resulted in a low level of activity over the past few years.

Tax-wise, the system is relatively simple. There is a royalty levied on production in excess of 10,000 barrels of crude oil per year, at 9 per cent in the case of onshore areas and 10 per cent in the case of shallow (less than 200 metres water depth) offshore areas. No royalty is levied on production obtained from deep offshore areas, nor on natural gas. Oil companies are further subject to corporate income tax, to which a municipal surcharge may be added. Imports and exports are treated under EU rules.

Conflicting interests with other activities that are seen as having a larger short-term social and economical impact may affect exploration operations: in at least one case, regarding activities that were to be started in the areas off the southern coast, concerns raised in the press that tourism could be negatively affected by the start of oil exploration operations led to a delay in the formal signature of the concession agreement.

Still, the combination of technological advances that make possible exploration and production operations at ever deeper depths, with development of geological knowledge (and the recent news of further discoveries made in the Grand Banks area) and a flexible and overall favourable legal and tax regime may justify a fresh look at the country's petroleum potential.

II LEGAL AND REGULATORY FRAMEWORK

i Domestic oil and gas legislation[3]

Oil and gas exploration and production activities are regulated by Decree-Law No. 109/94, published on 26 April 1994 (the Decree-Law).

The following documents were published to complement the provisions of the Decree-Law:

a Notice dated 21 July 1994, identifying the areas where oil exploration, development and production operations are permitted, amended by the Notice dated 12 March 2002;

b Dispatch No. 82/94, setting the amount of fees chargeable by the competent authorities for the issuance of preliminary evaluation licences and for the signature of concession agreements and assignment agreements;

c Joint Dispatch No. A-87/94-XII, setting the amount of surface rentals; and

d Ministerial Order No. 79/94, published on 26 July 1994, setting the basis of the concession agreements mentioned in Article 83 of the Decree-Law.

These legal documents were adopted with the aim of clarifying and simplifying the rules and procedures governing oil and gas exploration and production, including the award of rights, and thereby to attract new investment to these activities.

The relevant contents of some of the major provisions of these legal documents may be summarised as follows:[4]

Property of mineral resources

Any mineral resources existing in the underground of any areas subject to the sovereignty or dominiality of Portugal are an integral part of the state's public domain. Oil and gas exploration and production activities may only be pursued under concessions granting exclusive rights without prejudice of any third parties to other activities or resources or to national interests concerning national defence, the environment, navigation and scientific investigation, and management and preservation of maritime resources. Conflicts shall be resolved jointly by the overseeing ministers pursuant to the national interests and in accordance with applicable international law rules and principles. Mere studies aimed at providing a better technical support to any requests for concessions may be carried out under a preliminary evaluation licence.

Public tender procedure for award of concessions

In line with EU directives concerning public contracting and in order to increase transparency in the award procedures, the preferred method for the award of oil and gas exploration and production rights is a public tender organised by the Energy and Geology General Directorate (DGEG), through its Department for Oil Exploration and Production (DPEP), which must publish announcements in the Official Gazette and

3 For the complete texts of the legal documents mentioned, see www.dgeg.pt/dpep/en/law.htm.

4 For further details see Section III, *infra*.

in the Official Journal of the European Union containing the terms of reference of the tender, including the basis of the concession agreements.

The DGEG is charged with the evaluation of the bids, which must conform to the terms and conditions published with the announcement, and preparing a recommendation to the overseeing minister. The minister may decide to award the concession or, if the bids received are not satisfactory or do not comply with the terms of reference, may decide not to make an award. The decision of the minister is appealable to the administrative courts under general legal terms.

Direct negotiations

Any company interested in being granted a concession should apply directly to the DGEG. If there is no public bidding announced, the DGEG shall negotiate the terms and conditions of the concession, which must conform to the applicable legal provisions, and, within 90 days (extendable for a further 60 days), submit a proposal to the minister.

Preliminary evaluation licence

A preliminary evaluation licence is limited to the study of existing data and documents and surface and wellbore samples and other studies that may be conducive to a better understanding of the area's petroleum potential. The licence lasts for a single non-extensible period of six months unless it is compulsorily terminated by the state if the licensee has failed to comply with its obligations.

Standards in the execution of the petroleum activities

Within the limits of the law and the concession agreement, the concessionnaire shall be free to decide on the best way to carry out its activities. However, it shall execute the petroleum activities in a regular and continuous manner, and in accordance with the best practices of the international petroleum industry, and shall be responsible for losses and damages caused to the state or any third parties as a consequence of said activities.

Termination and revocation

The rights granted shall terminate:

a at the end of the initial period, if the concessionnaire has not made a demarcation of an oilfield, or at the end of the production period;

b at the concessionnaire's request, effective on the whole or part of the concession area, with 30 days' advance notice prior to the end of the third year or of any subsequent year of the initial period, or with one year's advance notice at any moment during the production period;

c at any time, by mutual agreement of the state and the concessionnaire;

d at any time by unilateral decision of the state, as a penalty if the concessionnaire has failed to execute any operations included in approved work plans and budgets, has assigned it rights or parts thereof without due authorisation, has abandoned any oilfield without due authorisation, or has failed to comply with any of its contractual obligations; or

e at any moment at the state's initiative, for reasons in the public interest and with payment of fair compensation.

Upon termination of the concession, any works, information, equipment, instruments, facilities and other assets permanently linked to the concession shall revert to the state, free of any charge, cost or compensation to the concessionnaire.

Confidentiality

The concessionnaire and its contractors shall keep confidential all data and information pertaining to the concession for the whole duration of the concession, and shall not disclose any such information without the DGEG's prior authorisation.

Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC requires legislative action prior to 15 July 2015, to introduce further requirements on the operators concerning the provision of information and the adoption of risk management and safety measures, currently not extensively dealt with in the legislation.

ii Regulation

The DGEG has direct regulatory competences over oil and gas exploration and production activities, and develops its activities under the supervision of the overseeing minister. The DGEG is, therefore, the entity to whom interested entities should address themselves to resolve any issues concerning a concession agreement or a preliminary evaluation licence.

The DGEG may act as a facilitator in the relations with other administrative entities that may have interfering competences regarding the execution of operations, including environmental authorities. Fieldwork shall require the appropriate environmental impact assessment and the adoption of adequate safeguards. Usual EU standards in these matters should be closely followed.

Works relating to onshore operations, namely seismic, drilling and construction shall require prior licensing by competent municipal licensing entities. Offshore operations also need to be licensed by the competent maritime authorities, as do any construction activities that may be developed in areas subject to their jurisdiction (shoreline, harbours, etc.).

Support and ancillary activities, usually carried out by contractors (such as land, air or sea transport, construction, radiotelegraphy and others) may require specific licensing as per generally applicable rules and regulations. Such licensing requirement may also apply to the contractors themselves, it being the concessionnaire's responsibility to ensure that all its contractors have their required licences in good order.

iii Treaties

Portugal is a signatory of the New York Convention, and has a long-established practice of agreeing to arbitration as the preferred method for settling disputes, even when the state is one of the parties thereto.

The Decree-Law states that the concession agreement (and the preliminary evaluation licence) has the nature of an administrative contract, and that any disputes with the concessionaire arising from the concession agreement shall be settled by

arbitration, to be held in Portugal, with Portuguese procedural laws being applied.[5] The Decree-Law requires that the concession agreement contains the arbitral clause that the parties agree to submit to.

Portugal has concluded bilateral investment protection treaties with nearly 50 countries,[6] and has signed treaties to avoid double taxation following the OECD model with more than 60 countries.[7]

III LICENSING

As mentioned, oil and gas exploration and production rights are granted by way of concession agreements that closely follow the provisions of the Decree-Law.[8]

The key terms for the concession agreements may summarily be described as follows:

a Concession area: a single concession area may comprise up to 16 contiguous 'lots', arranged in one or more 'blocks'.[9]

b Rights granted: the concessionnaire shall have the exclusive rights to explore and, in the event of a discovery, to develop and produce the crude oil and natural gas discovered.

c Initial period: the concession activities shall be split into several phases. The first phase, which shall last for eight years[10] (extendable at the concessionnaire's request for two additional periods of one year each) shall be dedicated to exploration, defined as all office, labwork and fieldwork carried out in the concession area for

5 In this case we would believe that the arbitral procedure would be ruled by the arbitral procedure regulation contained in Law No. 63/2011, published on 14 December.

6 Albania, Algeria, Angola, Argentina, Bosnia and Herzegovina, Brazil, Bulgaria, Cape Verde, Chile, China, Croatia, Cuba, Czech Republic, East Timor, Egypt, Gabon, Germany, Guinea-Bissau, Hungary, India, Kuwait, Latvia, Libya, Lithuania, Macau, Mauritius, Mexico, Morocco, Mozambique, Pakistan, Paraguay, Peru, Philippines, Poland, Qatar, Romania, Russia, São Tomé and Príncipe, Slovakia, Slovenia, South Korea, Tunisia, Turkey, Ukraine, Uruguay, Uzbekistan, Venezuela and Zimbabwe.

7 Fifty-nine are already in force as eight are signed but still pending on exchange of notices to come into force. The 59 already in force are: Algeria, Austria, Belgium, Brazil, Bulgaria, Cape Verde, Canada, Chile, China, Cuba, Cyprus, Czech Republic, Denmark, East Timor, Estonia, Finland, France, Germany, Greece, Guinea-Bissau, Hungary, India, Indonesia, Iceland, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Macau, Malta, Mexico, Morocco, Mozambique, the Netherlands, Norway, Panama, Pakistan, Poland, Romania, Russia, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, the United Arab Emirates, the United Kingdom, the United States, Uruguay and Venezuela.

8 See www.dgeg.pt/dpep/en/law.htm.

9 For deep offshore areas, these limits may be exceeded.

10 For deep offshore areas, the mentioned duration limit may be exceeded.

the purpose of discovering or appraising petroleum accumulations not already included in a general development and production plan (see below).

d Annual work programmes and budgets: during the initial period, the concessionnaire shall submit to the DGEG annually, until the end of October, an annual work programme, duly detailed and including the respective budget, concerning the activities that will be carried out in the ensuing year. The DPEP may reject a plan if it breaches the law or the concession agreement, and the concessionnaire shall be notified to submit a new plan. Whenever technically justified, amendments to the annual plan may be submitted to the DGEG.

e Performance of activities: once an annual plan is approved, the activities described therein are deemed approved in principle. However, no field operations (geological and geophysical surveys, exploration drilling and gathering of samples for study, etc.) shall be started without specific approval of the DGEG, which must be requested with 30 days' advance notice. The DGEG may notify the concessionnaire to submit a new proposal if the original breaches the law or the concession agreement.

f Contractors: the concessionnaire may freely use contractors for the performance of any activities or operations, giving prior notice to the DGEG of all contracts it intends to enter into for these purposes, informing of the scope, duration, identity of the contractor and of the persons who will be in charge of the supervision of the performance of the operations and activities under reference.

g Bonds: during the initial period, the concessionnaire shall annually post a bond (a first demand bank guarantee or similar) in an amount equal to 50 per cent of the budget submitted to the GPEP for the year in question. This bond shall be used to guarantee the payment of penalties or indemnifications owed for the breach of obligations or damaged caused in the execution of the operations.

h Exploration wells commitment: exploration activities shall include the execution of a number of exploration wells, as scheduled in the concession agreement. In principle, at least one exploration well shall be drilled each year in each block starting on the fourth year of the concession. The number of wells drilled in excess of the annual commitment shall be deemed to be included in the commitment relating to the subsequent year.

i Area relinquishment: at the end of the fifth concession year the concessionnaire shall relinquish at least 50 per cent of the area not included within demarcated areas (see below), being free to select what parts of the concession area are to be relinquished. The area to be relinquished must have a regular polygonal shape.[11]

j Discovery, delineation and production: if, before the end of the initial period, the concessionnaire identifies an oilfield within the concession area, it shall provisionally demarcate the area in question (which shall have a regular polygon shape) and submit to the DGEG a general development and production plan of the oilfield. Such plan should include a technical report characterising the reservoir, a delineation map, the development and production work programme,

11 For deep offshore areas, the area to be relinquished may be smaller.

including drawings evidencing the location of facilities to be built; describe the investments to be executed and the financial support thereof; indicate the estimated production start date and a schedule of production over time; and a list of licences and permits to be obtained or pending. Once this plan has been approved, a 25-year 'production period' shall start in respect of the delineated area, and the concessionnaire shall thenceforth annually submit a detailed plan and budget concerning next year's activities in that area. Final delineation shall be submitted within five years, but the DGEG may extend this limit if it is technically justified. The production period may be extended for one or more periods of a minimum three-year duration, up to a total extension limit of 15 years.[12]

k Rights to oil and gas: the concessionnaire shall be entitled to lift the oil and gas originated from the production operations, and freely dispose thereof. Flaring of any associated gas not used in production operations or channelled to commercial use requires approval of the overseeing minister.

l Transportation and storage facilities: the concessionnaire shall have the right to build transportation and storage facilities as required. Any surplus capacity that may exist in such facilities may have to be made available to third parties in mutually agreeable terms and conditions.

m Health and safety: the concessionnaire shall ensure due fulfilment of all national and EU health and safety regulations and shall prepare, submit to the DGEG and maintain permanently updated the plans and measures as may be adequate to ensure such fulfilment.

n Environmental protection: the concessionnaire shall adopt all necessary measures and precautions to ensure the minimisation of the environmental impact of its activities, and shall timely submit to the DGEG its environmental protection plans as per applicable legal provisions.

o Unitisation: oilfields that extend beyond the boundaries of the concession shall be unitised, if the area to which the oilfield extends is included in another concession. If said area is free, the concessionnaire shall have the right to request direct negotiations for the rights over said area. If the concessionnaires of two adjoining areas fail to reach an agreement on the terms and conditions of the unitisation, the government may decide to integrate the oilfield into one of the concessions under reference, basing said decision on sound economical and technical criteria. In such case, the government may rescind the affected concessions, paying the appropriate compensation to the concessionnaires whose interests are affected.

p Plugging and abandonment: plugging of any wells and abandonment of an oilfield on grounds of lack of economical substance or technical feasibility shall be subject to the approval of the DGEG.

12 For deep offshore areas, the time limits for the production period and its extensions, and the time limit for submitting the final delineation of the oilfield may be exceeded.

The preliminary evaluation licence is a much simpler document. The rights enable the licensee, for a limited period of time, to access information with the purpose of conducting studies that will help confirm its interest in securing concession rights.

IV PRODUCTION RESTRICTIONS

The concessionnaire shall be free to market the oil and gas it will have produced, being entitled to sell it locally or to export it. The only restrictions that may apply are those resulting from international sanctions to which Portugal is bound.

There is no specific requirement to satisfy national needs. In the event of war or national emergency declared by the government, a part or the whole of the production may be requisitioned to ensure the satisfaction of Portugal's strategic requirements. The concessionnaire shall be entitled to compensation in an amount equal to the value at market prices of the quantity of the requisitioned product.

Market price, for these purposes, as well as for determination of taxes, is defined as the price then prevailing in the international markets for products with similar characteristics.

V ASSIGNMENTS OF INTERESTS

Upon prior approval of the supervising minister, requested through the DGEG, the concessionnaire (or licensee) may assign the whole or part of its rights to third parties. The sale of 50 per cent or more of the shares of the concessionnaire or the licensee shall be deemed an assignment.

The request shall fully identify the assignee and provide adequate information on its technical and financial capabilities. The decision is made under ordinary administrative procedures and is usually issued within 90 days. A fee is payable on occasion (see Dispatch No. 82/94).

The assignment may be subject to competition sanctioning as per applicable legal provisions.

If the assignment is made via a sale of a participating interest, the gain (difference between book value and actual selling price) resulting from the proceeds of the sale shall be subject to tax.

VI TAX

The concessionnaire shall pay surface rentals at the amounts stated in the concession agreement, which vary from €12.50 to €250.00 per year per square kilometre[13] according to the potential of the area and the contractual period.

There shall be a royalty on the value of the production. The applicable sliding scale rates shall be determined according to the following table:[14]

13 These amounts were set in 1995 in the Joint Dispatch mentioned above.

14 See Article 51 of Decree-Law No. 109/94 and www.dgeg.pt/dpep/en/fiscality_pt.html.

Crude oil	*Percentage*
Onshore fields	0–9%
Annual production up to 300,000 tons (+/- 6,000 bbl/d)	0%
Annual production between 300,000 and 500,000 tons (+/- 6,000 – 10,000 bbl/d)	6%
Annual production in excess of 500,000 tons (+/- 10,000 bbl/d)	9%
Shallow offshore fields (< 200 metres water depth)	0–10%
Annual production up to 500,000 tons (+/- 10,000 bbl/d)	0%
Annual production in excess of 500,000 tons (+/- 10,000 bbl/d)	10%
Deep offshore fields (> 200 metres water depth)	0%
Gas and condensates	0%

The concessionnaire shall be subject to pay the generally applicable corporate income tax at the applicable rates.[15] The following particular rules, contained in the Decree-Law, will apply to income generated from crude oil and gas production:

Investments in exploration may be amortised pursuant to general applicable rules, from the moment production starts. However, investments that may be allocated to a discovery and its subsequent appraisal may be fully deducted in the first full year of production.[16]

The concessionnaire may constitute or reinforce tax-deductible provisions to finance its oil and gas investment in exploration activities in Portugal in the three years following said constitution or reinforcement. The amounts to be so provisioned may not exceed the lower of the following:

a 30 per cent of the value of gross sales of crude oil produced in the concession areas in the year when the provision is made or reinforced; or

b 45 per cent of the amount of the taxable income that would be calculated before calculating the amount to be allocated to the provision.

If these requirements are not met, the net profits of the tax period in which this non-compliance occurs shall have to be adjusted accordingly. This deduction shall be conditional on the non-distribution of profits equal to the amount remaining uninvested.

Exploration investments funded with the amounts of the provision are not eligible for amortisation.

15 Rates may vary annually in accordance with the provisions of the state budget approved by parliament. Currently the corporate income tax rate is 25 per cent, to which a maximum of 1.5 per cent municipal surcharge may be levied on taxable profits. Furthermore, a state surcharge of 3 per cent may be levied on taxable profits over €1.5 million up to €7.5 million and at 5 per cent on profits exceeding €7.5 million.

16 See Article 42 of the Portuguese Corporate Income Tax Code and also Article 50(3) of Decree-Law No. 109/94.

VII ENVIRONMENTAL IMPACT AND DECOMMISSIONING

Pursuant to Decree-Law No. 69/2000, published on 3 May (as amended by Decree-Law No. 69/2003, Law No. 12/2004, Decree-Law No. 197/2005, Decree-Law No. 225/2007 and Decree-Law No. 60/2012), and following the regulations contained therein, an environmental impact assessment must be submitted to and approved by the Portuguese Environmental Agency before any projects that are likely to result in significant contact with the environment, including oil and gas operations. The environmental impact assessment is, therefore, a preventive method to foresee, estimate and reduce negative impacts and introduce possible alternatives, based on studies and data gathering. The outcome of the assessment is an environmental impact statement. The statement includes the decision, which can be favourable (with or without conditions) or unfavourable.

The Decree-Law does not have any specific rules concerning decommissioning. However, the concessionnaire's generic duty to act in accordance with the best practices of the industry (see Section II.i, 'Standards in the execution of the petroleum activities', *supra*) and general legal provisions and principles governing environmental protection and safety would apply subsidiarily to abandonment.

The concessionnaire may abandon an oilfiled due to technical or economical reasons provided that it requests the minister's permission through the DGEG. The DGEG will convey the request to the minister, with its recommendation, within 30 days following receipt of the concessionnaire's request. If the minister's decision is not communicated within 90 days following the DGEG's receipt of the concessionnaire's request, the concessionnaire may deem that the decision was negative, and submit the issue to arbitration.

VIII FOREIGN INVESTMENT CONSIDERATIONS

i Establishment

The preferred way to award concession rights is via public bidding. However, the last public tender that was organised happened in 2002, and there are no plans to organise a new one in the foreseeable future. Therefore, the advisable route for interested companies would be to approach the DGEG for the purpose of conducting direct negotiations.

The concessionnaire does not have to be a Portuguese company, nor does the Law require it to incorporate a local subsidiary. Still, a form of local establishment must be created. Opening a branch of a foreign corporate entity will satisfy this requirement.

The purpose and main advantage on the incorporation of a branch (which is not a separate legal entity but rather an extension of the head office with a recognised local standing) is related to the simplification of foreign companies' activities and direct and indirect costs reduction. The branch, being a part of the foreign company, does not have its own share capital. The incorporation documents may allocate to the branch certain amount that will be used as equity for the purposes of funding its activities.

The branch managers designated by the company shall be given all the powers as may be necessary for the appropriate management of the branch.

The formalities for incorporating a branch are as follows:

a a resolution adopted by the appropriate body of the foreign company authorising the creation of the branch in Portugal, stating the amount of the equity eventually allocated to it, the address of its office and the identification of the manager(s);
b execution of a power of attorney by the legal representatives of the foreign company granting powers to the manager(s) of the branch;
c obtaining from the National Register of Corporate Entities (RNPC) a certificate of corporate denomination for the branch;
d registration of the branch with the Commercial Registry Office;
e start-up declaration at the tax authorities; and
f registration with Social Security.

Incorporating a local company is more complex and takes longer. The formalities for that purpose are as follows:

a obtaining from the RNPC a certificate of corporate denomination or legal entity name;
b obtaining taxpayer identification numbers for foreign shareholders and future foreign managers or directors;
c opening a bank account and depositing the minimum compulsory amount of the share capital (minimum share capital is €50,000, of which 30 per cent must be deposited prior to incorporation, the remaining amount being deferrable for up to five years);[17]
d execution, by the designated representatives of the foreign company, of the incorporation agreement and articles of association (the powers of attorney of said representatives and their signatures being certified);
e registration of the company with the Commercial Registry Office;
f online publishing of the incorporating documents;
g start-up declaration at the tax authorities;
h registration of the company and its corporate body members with Social Security; and
i opening the minutes books of the general meeting and board of directors.

It may be possible to use a special fast-track procedure for the immediate incorporation of local companies and branches of foreign entities in Portugal. In this case, some of the formalities are abbreviated, as the investor is given the opportunity to choose a corporate name from a list of pre-approved possibilities, and also from a set of pre-written by-law models, where the investor is required to fill in certain blanks, namely the amount of

17 In the case of a company by shares (*sociedade anónima*), equivalent to the French SA or the German AG; in the event that another type of company, named '*sociedade por quotas*' similar to the French SàRL or the German GmbH, there is no minimum amount for the share capital, which may be freely set by the shareholders, provided that each 'quota' shall have a minimum nominal amount of €1. Shareholders must deposit at least 50 per cent of the amount of each 'quota' prior to the incorporation of the company, the remainder being deferrable for up to a maximum of five years.

the share capital or equity, the description of the corporate purpose and the number of members of the corporate bodies and their identification. The investor may later promote other alterations to the models to suit its own purposes.

ii Capital, labour and content restrictions

Movement of capital and access to foreign exchange

Portugal is a Member State of the EU and of the euro area, and therefore applies EU internal market rules to capital movements and access to foreign exchange.

Without prejudice to the applicability of the harmonised legal framework on money laundering or terrorist financing, Portuguese law does not set limits for entry of foreign capital or access to foreign exchange. Save for limitations resulting from international sanctions, investments are treated under a principle of non-discrimination on grounds of nationality.

There is no requirement for national partners, and there are no specific obligations for foreign investors nor any restrictions on dividend repatriation.

In general, foreign and local companies are entirely free to invest in any industry or business sector. However, in the case of activities subject to administrative controls or licensing, with particular relevance to oil and gas operations, specific requirements, such as the award of a concession, may apply (see above).

Hiring of foreign workers

Portugal is a signatory to the Schengen Agreement governing circulation of persons.

There are no restrictions on the ability of oil and gas operators to hire employees who are Portuguese nationals or citizens of other EU Member States.

For hiring workers from third countries it is necessary that they are duly legalised in Portugal or in any other EU Member State, holding a residence permit or temporary visa for the purpose. Obtaining a residence visa that permits the holder to take up employment in Portugal depends on the existence of employment vacancies that cannot be filled by Portuguese nationals or by nationals of other EU or EEA Member States, or of third countries with which the European Union has concluded an agreement on free movement of people, as well as nationals of third countries legally resident in Portugal.

iii Anti-corruption

In general, Portugal applies the same measures to prevent active and passive corruption that are applied in the other Member States of the EU, and namely those that are prescribed in Directive 2003/568/JHA, issued on 22 July 2003 by the European Council, which calls on Member States to criminalise acts of active and passive corruption and to adopt the necessary measures to ensure the criminal liability of legal entities for such acts.

Under Portuguese criminal legal provisions, organisations can be held criminally liable for crimes of corruption when improper tangible or intangible advantages are promised or given by a person that occupies a management position or who is acting with delegated authority. The Portuguese Penal Code provides that legal entities shall be exempt from criminal liability for acts of corruption committed within the organisation if the perpetrator acted against express orders or instructions from management.

Appendix 1

ABOUT THE AUTHORS

RUI MAYER

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Rui Mayer is a partner at Cuatrecasas, Gonçalves Pereira and is in charge of the oil, gas and mining area.

He began practising in 1982. He was a legal adviser of Partex – Companhia Portuguesa de Serviços, SA, where he began his activity in the oil and gas sector. He was resident manager of the oil exploration and production division of the Finnish company Neste Oy, in Lisbon and Algiers. He also worked as corporate secretary and general manager of human resources at Petróleos de Portugal, Petrogal, SA. Between 2000 and 2013, Rui was general counsel of the Galp Energia Group. His practice has focused on the legal themes relating to all components of the oil and gas industry's value chain. He also has experience in the area of commercial and corporate law, having participated in several mergers and acquisitions, corporate reorganisations, financial transactions, and employment law.

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Diogo Ortigão Ramos joined Cuatrecasas, Gonçalves Pereira in 1996 as an associate. He became a partner in 2000. He is now head of the firm's tax practice in Portugal.

He focuses his practice on EU, national and international taxation, M&A, buyouts, corporate restructuring, financial transactions, structuring and transactions. He also has experience on structuring transactions at Centro Internacional de Negócios da Madeira.

Diogo has been recommended by several directories, including *Chambers Europe*, *PLC Which Lawyer?*, *World Tax* and *Tax Directors Handbook* for his work in tax and with private clients.

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Ana Isabel Marques joined Cuatrecasas, Gonçalves Pereira in 2005 as an associate. She is now a senior associate at the firm.

Her main practice focuses on administrative litigation and public law, in particular, urbanism, town planning, environmental and regulatory law. In particular, projects on which she has advised in recent years include town planning; monitoring of procedures relating to the construction, installation, management and operation of real estate developments, in the residential, commercial, industrial, logistic and tourist segments; advising in environmental impact assessment, gaseous emissions, waste management; and audits on compliance with urban, environmental and regulatory rules.

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Bruno Neves de Sousa has been an associate at Cuatrecasas, Gonçalves Pereira since 2009. His practice focuses on real estate, commercial and corporate law, and mergers and acquisitions. Currently he is mainly dedicated to oil, gas and mining and related operations. Bruno has published various articles and monographs in technical journals and reviews on civil and corporate law.

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