

LEGAL FRAMEWORK OF THE PETROLEUM INDUSTRY

Main regulations

- ✓ Petroleum Law no. 238 of 2004 (“Petroleum Law”)
- ✓ Methodological Norms for the Application of Petroleum Law (“Norms”)
- ✓ Technical instructions, and other regulations issued by the National Agency for Mineral Resources
- ✓ Gas Law no. 351 of 2004 (“Gas Law”)
- ✓ Natural Gas Permitting and Licensing Regulations
- ✓ Natural Gas Network Code, and other regulations issued by the National Energy Regulatory Authority (Gas Regulatory Authority”)

Ownership of petroleum resources

The definition of petroleum provided by the Petroleum Law includes crude oil, condensate, and gas.

The title holders are defined as the parties to petroleum agreement with the competent authority, i.e. the National Agency for Mineral Resources (“NAMR”).

Further the Petroleum Law provides that the underground petroleum resources are public property, property of the State. Therefore, a question arose with regard to the transfer of petroleum resources to the title holders. The law is silent on this issue. Thus, this issue was resolved by including in the agreements clauses which provide that the transfer of the petroleum resources to the title holders takes place at well head.

NAMR is in charge of the management of the petroleum resources.

All data and information regarding petroleum resources are considered as the property of the State. The companies carrying out petroleum operations may use the relevant data and information for the duration of their operations. The transfer to third parties of data and information regarding petroleum resources must be approved by NAMR.

The works for the development and exploitation of the petroleum resources may be carried out only in relation to reserves confirmed by NAMR. The documentation for the calculation of the reserves must be prepared by the title holder in accordance with the technical norms issued by NAMR.

Access to land for petroleum operations

The Petroleum Law and the Gas Law create legal easements regarding access to land needed for petroleum operations and installations in favor of the title holders.

The Petroleum Law provides that the title holder must pay an annual rent to the land owner. If the parties fail to agree on the amount of the rent the dispute must be referred to the court of competent jurisdiction. The law provides that any damages claimed by a landlord will be estimated function of the value of the affected crop, or the market value of the land.

However, the Gas Law carves out an exception in the case of easements related to gas operations. Such easements are free of any charge for the life of the gas operation on the land. In practice though, title holders agreed to pay the landlords annual rents in tolerable amounts correlated with the lost crop values.

The Gas Law provides that the title holders have the following rights:

- a. the right of use in relation to the necessary works for the rehabilitation of the gas production installations;
- b. the right of use in relation with the normal operation and maintenance of the gas production installations;
- c. the legal underground, surface, and air right of way for the installation of pipelines power lines or other equipments related to the gas production installations, and for the access to the location of such ancillary equipment;
- d. the right to obtain the reduction or cease of activities which would endanger the gas installations, and the public safety, such like obtaining interdictions to build, to dig trenches, and to deposit materials in the protected zone, or to carry out any works which would affect the gas production installations, and the related pipelines;
- e. right of access to utilities.

In the last couple of years we have seen a couple of cases regarding disputes between landlords and title holders of gas exploration and production agreements. In one of such case after the title holder filed a documented reply, the landlord dropped her claim. In another case the title holder agreed to continue to pay an annual rent in a tolerable amount.

Transportation of petroleum

The National Petroleum Transportation System is public property, property of the State.

The systems for the transportation of oil and gas are operated by two state-owned companies, Conpet, and respectively Transgaz.

The above operators have the obligation to provide equal access to the interested parties. The Petroleum Law, and the Gas Law specify the cases in which the operators may deny access to

the transportation systems. The party whose access to the transportation system was denied may file a complaint with the competent authority.

The access to the natural gas transmission system is arranged in accordance with the provisions of the EU Regulation no. 1775 of 2005 regarding the Conditions of Access to the Gas Transmission Systems, and with the Romanian regulations.

The access to the NTS has three stages:

- a. the inquiry to the operator of the NTS re the possibility to access the NTS in a specific area;
- b. the booking by the respective applicant of capacity within the NTS;
- c. the connection to the NTS.

The access to the upstream feeding pipelines is arranged in accordance with the provisions of the Romanian regulations and is granted by the respective operator of the upstream feeding pipeline.

The rules for the access to the storage facilities are provided by Romanian regulations.

The access is provided based on classes of priority, and according to the rule “first come, first served”, within the same class of priority.

The tariffs re gas transmission services and gas storage are regulated by ANRE.

Petroleum concession

The petroleum concession is the legal vehicle for the access of investors to petroleum resources.

The initial term of the concession may be of up to 30 years, and it may be extended for a period of up to 15 years.

The concessions for the exploration and production of petroleum resources are awarded through competitive tenders organized by NAMR.

A foreign company which was awarded a concession has the obligation to set up a branch or a subsidiary in Romania within 90 days from the effective date of the petroleum agreement.

The interested parties may initiate the concession award process. It is worth noting that an interested party may apply for non-exclusive exploration permit for a term of up to three years – as mentioned above, if the findings are satisfactory the respective party may initiate the concession award process.

The winning bidder will sign a concession agreement with NAMR. The concession agreement must be further approved by the Government and comes into effect on the date of such approval.

The title holder may assign the concession agreement with the prior approval of NAMR. The change of certain terms of the concession upon assignment may be negotiated with NAMR. In case of the restructuring of the company, which is title holder of the concession agreement, the concession will be transferred to the successor entity by an order of NAMR President.

Partial relinquishment of the concession is possible, and is governed by the concession agreement.

The concession agreement terminates upon expiration of the term of the agreement, and at the request of the title holder in case of force majeure.

Early termination at the request of the title holder is possible. The title holder will have to pay the amount representing the value of the minimum program works which were not performed, and if that is the case, and amount representing the value of the abandonment works which were not performed. Also, the title holder must submit to NAMR a certificate issued by the environmental agency which will attest the performance of the works for remediation of the damages caused to the environment. If the title holder complied with the above described obligations, and NAMR refuses to approve the termination, the title holder may take legal action in the court of competent jurisdiction.

In specific situations provided for by the Petroleum Law, NAMR may suspend the concession, or initiate the termination of the concession agreement.

Title holder's rights

Petroleum Law provides that the concessionaire has the following main rights:

- a. access to and use of the land;
- b. access to petroleum pipelines, harbors, terminals, and other necessary installations;
- c. use of surface waters;
- d. laying of the pipelines and construction of petroleum production and transportation facilities;
- e. extension of the block to adjacent areas;
- f. access to data re relevant petroleum operations;
- g. to designate the Operator and the Operator's duties;
- h. to dispose of its share of the petroleum production, including the right to export its petroleum share.

Title holder's obligations

Petroleum Law provides that the concessionaire has the following main obligations:

- a. compliance with the laws, regulations, and the provisions of the petroleum agreement;
- b. preparation of the technical and economic studies re the envisaged petroleum operations and submit them to NAMR;
- c. reporting of all data re petroleum operations, and the controlling actions of the environment, and labor safety authorities to NAMR;
- d. keeping confidential the petroleum agreement, and the data received from the Romanian authorities;
- e. unitization, if required by NAMR;
- f. training of Romanian personnel, and technology transfer;
- g. payment of petroleum royalty.

Extension of the term of the work phases, change of work programs

NAMR must approve:

- a. changes to the initial work programs, and extensions of the exploration, development, and production phases;
- b. extension of the block to free adjacent areas; and
- c. change of the estimation of petroleum reserves.

In our experience NAMR was flexible regarding the above matters.

Stabilization clauses

The stability of the petroleum agreement is an important principle for the investors in the oil and gas sector. The goal is to guarantee that the terms and conditions of the petroleum agreement in effect on the date of the signing will stay the same over the life of the agreement.

The principle of the stability of the petroleum agreement is recognized by the Petroleum Law. Thus the law provides that the terms of the petroleum agreement remain in effect for the duration of the agreement, save for the enactment of legal provisions that are more favorable to the title holder.

However, the law provides that the parties can amend the petroleum agreement by mutual agreement in case of occurrence of unforeseen circumstances.

Usually, in our experience, the petroleum agreements also include stabilization clauses.

In addition to the Petroleum Law, the Law no. 555 of 2004, regarding the Privatization of Petrom provides for the stabilization of petroleum exploration and production taxes, and of the petroleum royalties in effect in 2004, until December 31, 2014.

Petroleum Royalties

The Concession Agreement is a royalty based contract.

The Petroleum Law provides for scaled royalties based on gross production. For crude oil the royalty ranges from 3.5% to 13.5%. For natural gas the royalty ranges from 3.5% to 13%.

The royalty is payable for each commercial field. The commerciality of the field is approved by NAMR. Production is allowed solely from reserves approved by NAMR.

The reference price for the calculation of the royalty is set by NAMR. The royalty is payable quarterly.

The fiscal legislation provides for the payment of penalties in case of delay of royalty payments. A delay for more than six months is a ground of termination of the concession agreement by NAMR.

Settlement of disputes

The petroleum agreements may provide for the settlement of disputes by the local courts of law, by arbitration in Romania, or by international arbitration.

Foreign investors in general want to resort to international arbitration.

Farmout/Farmin Agreement, Joint Operating Agreement

Any assignment of a working interest in a concession must be approved by NAMR. The parties must submit a joint application which will mention the interest quotas, the corporate approvals, and proof that the transferee is in good standing, and has adequate financial and technical capabilities to perform the petroleum operations.

On the date of the filing of the application the transferor must have complied with the obligations assumed under the petroleum agreement. If that is not the case, the transferee must assume the obligation to be responsible for the transferor's outstanding obligations as well.

The Farmout/Farmin Agreement and related documentation such like the Joint Operating Agreement, Instrument of Transfer, Novation, etc. do not have to be submitted to NAMR.

Attestation and authorization of the technical competence

According to NAMR Order no. 122 of 2006, the companies and the professionals working in the oil and gas sector must obtain certificates of attestation of the technical competence. The certificates are issued by a Commission of Attestation set up by an order issued by NAMR. The above Order enumerates the documents which must be appended to the application for the issuance of the certificate of attestation. The documentation must include *inter alia* a

memorandum regarding the relevant petroleum operations carried within three years prior to the submission, documents attesting the technical qualifications of the personnel, and documents regarding the financial capacity of the applicant.

According to ANRE Order no. 89 of 2009, the companies and the professionals which are performing activities regarding project design, execution, and operation of installations for the production, underground storage, transportation, distribution, and utilization of natural gas must be authorized by commissions appointed by ANRE. The above Order enumerates the documents which must be appended to the application for the issuance of the certificate of attestation.

Main attributions of NAMR

- a. it acts not only as a regulatory authority, but it is also a party to the concession agreements;
- b. it manages the petroleum resources which are the property of the State;
- c. it is in charge of the storage and management of petroleum data and information, and the upkeep of the Petroleum Books for the petroleum blocks;
- d. it has the power to issue mandatory norms, rules, and technical instructions for the application of the Petroleum Law;
- e. it approved the work programs, drilling of exploration wells, well conservation and abandonment, re-entry, field commerciality, development plans, annual production plans, and assignments;
- f. it certifies the technical competence of individuals or legal entities conducting petroleum operations, including operators under concession agreements;
- g. it verifies compliance with laws and regulations.

NAMR may apply fines for failure to comply with the laws and regulations.

Natural gas licensing and permitting regulations

ANRE is another government agency which acts as a regulatory authority regarding natural gas. It may be argued that while NAMR regulates the downstream activities, ANRE regulates the midstream and upstream activities. However, to a certain extent we see a risk of overlapping.

In relation to the surface, storage, transmission, transit, dispatching, and distribution facilities, ANRE is issuing the following permits:

- a. facility set up permit;
- b. facility operation permit; and
- c. facility alteration permit.

ANRE also issues the following licenses:

- a. natural gas supply license;
- b. natural gas transmission license;
- c. natural gas storage license;
- d. natural gas dispatching license;
- e. natural gas distribution license; and
- f. natural gas transit license.

Romania was one of the pioneering countries in the oil and gas sector. The recent commercial discoveries gave an impetus to investment in this sector. The legal framework of the petroleum industry is comprehensive and continues to be updated in line with the relevant European Directives and international practice.

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