

GETTING THE DEAL THROUGH

Oil Regulation

in 33 jurisdictions worldwide

2014

Contributing editor: Bob Palmer



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Getting the Deal Through is delighted to publish the fully revised and updated eleventh edition of *Oil Regulation*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 33 jurisdictions featured. New jurisdictions this year include Croatia, Ecuador, Egypt, India, Indonesia and Morocco.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. *Getting the Deal Through* would also like to extend special thanks to contributing editor Bob Palmer of CMS Cameron McKenna for his invaluable assistance with this volume.

Getting the Deal Through

London
June 2014

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Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
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First published 2003
Eleventh edition
ISSN 1742-4100

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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Cameroon

Denis Borgia and Léon Ngako Djeukam

Borgia & Co

- 1** Describe, in general terms, the key commercial aspects of the oil sector in your country.

The Cameroon oil sector is mainly active offshore, more precisely in the Niger delta, south-west of the country close to the Nigeria border (and its huge petroleum fields). Many of the producing offshore fields are considered as being linked to the Nigerian producing offshore Niger delta fields. After 15 years of diplomatic discussions, in 2008 Nigeria returned the Bakassi peninsula (south-west of the country) to Cameroon, which is expected to be an important producing zone. Onshore potential is located around Douala, the economic capital and in the north-east sector of the country (Logone Birni basin).

The main producers of the country in 2013 were Perenco Cameroon and Exxon Cameroon. Victoria Oil and Gas (UK), through its wholly owned subsidiary Rodeo Development Limited, operates the Logbaba Gas and Condensate Field (Douala area). Bow Leven, Kosmos Energy and Addax Petroleum are also exploring.

According to the US Energy Administration, Cameroon's oil production is 57th in the ranking of the producing countries, with a daily production remaining at 63,000 barrels per day and estimated commercial reserves of 200 million barrels.

- 2** What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Total Cameroon production has constantly decreased since 2001: the total production last year was approximately 25 million bbl. Like most African countries, biomass (mainly wood) remains the primary energy source, representing 60 per cent of the total energy consumption in 2012, before petroleum (25 per cent), non-nuclear electricity (10 per cent) and gas (5 per cent).

Oil and gas production covers the national needs, but oil-refined products are sometimes unavailable, as the refinery capacity of the country is slightly in excess of its consumption requirements. Electricity production remains a huge problem. Production does not meet the national requirements and many sectors of the country are regularly shut down, with the consequence of the lack of available power and the unfitness of the distribution infrastructures. Improvement programmes have been implemented to support the economic growth, which is dynamic.

- 3** Does your country have an overarching policy regarding oil-related activities or a general energy policy?

As oil production represents 20 per cent of the overall revenue of Cameroon while production has regularly decreased during the past 10 years, the government has adopted a policy that should

encourage exploration and production. Among the modifications that have been adopted is the redistribution of the revenues from production.

- 4** Is there an official, publicly available register for licences and licensees?

A list of existing permits and concessions is available at the Cameroon Water and Energy Ministry. However, there is no direct internet access to the list of mining titles available from the Ministry for Mines and Energy. A list of titles is offered for sale on the site of Africa Oil and Gas (www.africa-oil-gas.com/cameroon_oil_and_gas_map_concessions_blocks_soft_edition-1450-1-2-c.html).

- 5** Describe the general legal system in your country.

The Cameroon legal system is a mix of French civil law and common law. Courts' jurisdiction is similar to the French system, with separate jurisdictions for commercial, civil and administrative disputes. The rule of law is generally upheld, though a wide discrepancy exists between regions of the country. Domestic and foreign decisions (including arbitration awards) can be easily executed. Cameroon is a member of the ICSID treaty for the settlement of disputes between states and foreign investors.

The principal law governing anti-corruption and anti-bribery is the Penal Code, which punishes a range of graft-related offences, including misappropriation or embezzlement of public funds, for which the accused face a sentence of life imprisonment. Corruption, offering a bribe, favouritism or influence-peddling is punishable with sentences that range from one to 10 years' imprisonment and fines from 100,000 to 2 million francs.

Regulation overview

- 6** Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The key law and regulations governing the upstream sector are the Petroleum Code, Decree No. 2000/465 of 30 June 2000 for the application of the Petroleum Code and Decree No. 2008/012 of 17 January 2008, amending and supplementing the regulation concerning the Cameroon National Hydrocarbons Company.

- 7** Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

There are no expropriation measures in force, except for the case where the title owner does not respect its obligations pursuant to the petroleum contracts that must be executed with the Cameroon National Hydrocarbons Company before delivery of the title (see question 10).

- 8** Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

For the titles delivery and the operations follow-up, the Ministry acts through the direction for petroleum and gas products. The petroleum contracts are signed by the Cameroon National Hydrocarbons Company, created in 1980, which acts as the state representative for all development and monitoring of exploration and exploitation. Though it has no regulatory power, its involvement in the negotiation and the execution of petroleum contracts governing the activities makes it a key player in the country.

- 9** What government body maintains oil production, export and import statistics?

The Ministry of Industry, Mines and Technology and the Ministry of Finance maintain oil production, export and import statistics.

Natural resources

- 10** Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights?

Pursuant to the Petroleum Code, ownership of all and any reservoirs is to the benefit of the state of Cameroon. The mining titles provide the licensee with the right either to explore or produce, but ownership of the reserves remain with the state.

Exploration is open either to Cameroon nationals (artisanal limited titles) or to any person or company, whether Cameroon nationals or not, that prove they have the technical and financial capacity to explore, exploit and remediate sites in accordance with the law. A title gives to its owner an exclusive right over the reservoir that is distinct from the ownership of the surface area.

- 11** What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

As briefly indicated above, the main portion of the production for the past 15 years was offshore production (80 per cent of overall production). Governmental policy is encouraging the development of the south-west region (Niger delta, near the Nigerian boundary), which has proven to have important offshore reservoirs, and the north-east sector, where important discoveries have been made in the past two years by United Kingdom and Chinese companies.

- 12** How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

Oil exploration and production are regulated by the Ministry of Industry, Mines and Technology. Exploration is open either to Cameroon nationals (artisanal limited titles) or to any person or company, whether Cameroon nationals or not, that prove they have the technical and financial capacity to explore, exploit and remediate sites in accordance with the law. Three types of titles are delivered: survey authorisations (eg, for seismic), exploration permits and exploitation permits.

An exploration permit is furnished by the Ministry of Industry, Mines and Technology for three years and can be renewed twice for successive two-year periods. An exploration agreement must be executed with the mining administration, which will govern the work programmes.

An exploitation permit is delivered by Presidential Decree for 25 years and can be renewed for additional 10-year periods, until the end of the economic life of the field. A production-sharing contract must be signed with the administration.

A title demand can target any sector not exceeding 1,000km², except limited military zones or zones closer than 50 metres to constructions. Petitions are presented to the mining titles conservatory. A title gives an exclusive right to its owner over the reservoir that is distinct from the ownership of the surface.

The petitioner submits its title demand to the Ministry and must prove its technical and financial capacities of executing the mining work programmes and exploitation of the discoveries. Technical capacity will be recognised if the petitioner is sufficiently staffed with people competent for the execution of its obligations. Financial guarantees may be required for the delivery of the mining title. There must be at least one petroleum company involved in the demand. The delay between an application and the granting of the licence generally does not exceed six months. The negotiation of the petroleum contracts with the Cameroon National Hydrocarbons Company may prolong this by a delay of, usually, an additional two months. Apart from inhouse expenditures for preparing and presenting the file, there are no fees for petitions. However, a signature bonus will be asked for by the Cameroon National Hydrocarbons Company for the execution of the production-sharing agreement; the amount is fixed by negotiation.

- 13** Does the government have any right to participate in a licence?

If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

The government participates in all licences through a production-sharing agreement. Such participation is determined through a partnership agreement that is executed between the Cameroon National Hydrocarbons Company and the licence petitioner when the title demand is examined by the administration. The amount of the share to be paid upon production shall be negotiated. There is no maximum participating interest, but it will generally vary between 20 and 40 per cent. The sharing is applied on amounts that are calculated after deduction of the portion of the revenues destined to cover operations costs, which is also negotiated through the production sharing agreement. Both the share and the operating costs amounts can consequently vary according to the level of production, and will be adjusted to take into consideration substantial changes in the economic situation. The administration does not participate in operations directly.

- 14** If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are there any tax stabilisation measures in place?

Once production is started, the title owner must pay two types of royalties: for onshore operations, the surface rights and the progressive royalty, and for offshore production, only the progressive royalty. Such royalties are determined by the production agreement that is executed with the administration. The progressive royalty shall be paid monthly either in cash or by delivery of a portion of the production, and generally amounts to 10 per cent, though the Cameroon National Hydrocarbons Company has indicated that it would increase its requirements. The surface rights vary from case to case, and are generally paid once a year.

Apart from the royalties, all producers shall also pay company tax (in 2013, representing 38.5 per cent of the benefits, plus 3.5 per cent for the local tax). A special 15 per cent tax is applied on foreign providers' agreements, consequent to the national preference measures in force, which imposes the stipulation of contracting with local companies and hiring Cameroon citizens.

Assignments of interests are subject to a tax of €350,000 (rounded).

15 What is the customary duration of oil leases, concessions or licences?

The customary duration is three years for exploration permits, renewable for two successive two-year periods and 25 years for exploitation permits, renewable for successive 10-year periods for the duration of the field life. New discoveries along existing reservoirs can lead to an extension of the existing title.

16 For offshore production, how far seaward does the regulatory regime extend?

The regulatory regime extends 200 miles from the shore (economic zone).

17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?

All onshore and offshore exploration and production are governed by the same rules.

18 Which entities may perform exploration and production activities? Describe any registration requirements. What criteria and procedures apply in selecting such entities?

Cameroon nationals can obtain artisanal exploration and exploitation permits (mainly for small-scale exploration and exploitation on their own property). Any company that proves it has the technical and financial capacity to explore, exploit and remediate sites in accordance with the law can obtain a title. It is an obligation to be incorporated locally and to be considered as a petroleum company, the status of which will be recognised if technical and financial capacities are evidenced as indicated above. The time period for incorporating a new company is usually four weeks, for a cost not exceeding €1,000.

19 What is the legal regime for joint ventures?

Joint venture regulation is left to the contractual determination by the co-owners, which will be linked with the administration by the work programmes' engagements and the production sharing agreement.

The administration obtains a regulatory 10 per cent participation in any mining company, which cannot be reduced in the case of the issuance of new shares.

20 How does reservoir unitisation apply to domestic and cross-border reservoirs?

Domestic reservoir unitisation will be subject to a specific agreement to be negotiated with the mining administration. There are no pre-established rules governing cross-border reservoir unitisation; frequently, countries disputing such a boundary litigate the delimitation of such boundary based on the United Nations Convention on the Law of the Sea of 10 December 1982 in the International Court of Justice (if such a boundary is found offshore), or enter a joint development agreement that covers a broad geographic territory proximate to the disputed boundary (Cameroon and Chad entered such an agreement in 2010 for the Cameroon northern cross boundaries basins).

21 Is there any limit on a party's liability under a licence, contract or concession?

There is no limit concerning the liability of a party owning a licence regarding the remediation of sites. A guarantee must be issued in favour of the administration, upon delivery of the title, by the shareholders of the licensee. The liability is joint and several between the licensee and its shareholders as a consequence of such a guarantee.

22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?

A parental guarantee is the most common requirement for licence deliveries. Additional guarantees, including security deposits, may be required in exceptional situations, but in principle the parental guarantee will suffice. When required, parental guarantees must be delivered by each and every parent company from the immediate controlling company to the ultimate indirect control holding. The guarantee covers all and any liability assumed by the licensee for the damages caused by its operations or the costs for site remediation.

Local content requirements

23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?

The petroleum contracts determine the scope of the preference that are afforded to local companies and employees. Apart from the contract, the Petroleum Code imposes on the licensee and its contractors the duty to give preference to Cameroon providers, provided they offer competitive conditions. Priority must also be granted to local workers. Operators must implement and finance programmes to develop Cameroon-qualified manpower.

Transfers to third parties

24 Is government consent required for a company to transfer its interest in a licence, concession or production-sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?

Approval from the Ministry of Industry, Mines and Technology is required for title transfer. The government benefits from a pre-emption right on any assignment project. It also benefits from a pre-emptive right on any title in cases of transfer, but, in practice, prefers to remain in a minority participation throughout the joint venture. The timetable for a transfer authorisation varies between 12 and 24 months.

A transfer tax of €350,000 (rounded) is now levied on any assignment.

25 Is government consent required for a change of operator?

Government authorisation is required for a change of operator. The new operator must prove its technical capacity. The title demand is submitted to the Water and Mines Ministry. The timetable for the authorisation, assuming the technical capacity is agreed, shall not exceed three months.

26 Are there any specific fees or taxes levied by the government on a transfer or change of control?

As stated above, a transfer tax of €350,000 (rounded) is now levied on any assignment.

Decommissioning

27 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?

The obligations of the operator will be stipulated in the operating agreement that will be executed with the administration. Generally, the operator shall decommission and restore sites to their original status, but special dispositions can be established that will leave the ownership of the sites in the hands of the state. Pipelines are decommissioned by the usual cleaning and inerting measures.

28 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?

There is no obligation to provide financial guarantees for decommissioning liabilities.

Transportation

29 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?

There is no specific regulation for road transportation, which is governed by general transportation laws. Pipeline transportation is governed and controlled by the Ministry for Planning.

The Ministry for Transport governs road transportation of products. Maritime transportation is governed by the unified code for maritime transportation that applies to Cameroon, the Central African Republic, Chad, Congo, Equatorial Guinea and Gabon. It enacts dispositions substantially in accordance with the international petroleum vessel transportation treaties.

30 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?

Apart from the construction and exploitation permits that are required for a pipeline, there are no specific requirements.

Health, safety and environment

31 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?

Only a few provisions of the Mining Code apply to environmental protection. It imposes the obligation to avoid pollution and exploit in such a way as not to alter the environment or expose humans or wildlife to hazards resulting from such exploitation. Waste shall be treated in accordance with pre-established authorisations from the administration.

32 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?

Not applicable.

Labour

33 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?

General labour law requirements apply to the oil industry. In order to be allowed to enter the territory, foreign nationals are required to obtain a visa from their country's embassy or consulate. There are no specific anti-discrimination provisions.

Under the Mining Code, penalties for non-compliance are fines ranging between €150 and €3,000; in some special circumstances (eg, injury or death), prison sentences may be imposed that last between several days and six months.

In addition, priority shall be granted to local workers. Operators shall implement and finance formation programmes to develop Cameroon-qualified manpower.

Taxation

34 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?

Apart from VAT (19.25 per cent), the owner of an exploration permit benefits from a total exemption from all taxes and royalties until the discovery proves to be commercial.

Once production is engaged in, the title owner shall pay the current VAT (with, however, an exemption on materials that are imported for exploitation and for production that is exported) and company taxes (the normal rate is 38.5 per cent of the yearly benefits, with a minimum charge of 1.1 per cent of the yearly revenue, but the company tax can rise to 50 per cent; its rate is determined by the production agreement that is executed with the administration).

Commodity price controls

35 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?

Prices have been freely fixed since 1999, but the National Crude Prices Commission provides public subsidies to maintain prices at an acceptable level for domestic consumption.

Competition, trade and merger control

36 What government bodies have the authority to prevent or punish anti-competitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Antitrust Law (1998) applies to all sectors of activity, including oil market activities, and prohibits any action or agreement that may affect free competition. The National Competition Commission is mandated to apply the law.

37 What is the process for procuring a government determination that a proposed action does not violate any anti-competitive standards? How long does the process generally take?

A petition has to be submitted in writing to the National Competition Commission to obtain approval of an agreement that may infringe the country's antitrust measures; the agreement will be examined and a decision rendered in a time frame generally varying between three and six months.

International

38 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?

Not applicable.

39 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence (eg, local subsidiary or branch)?

A local subsidiary shall be created to own the mining title and sign the petroleum contracts with the Cameroon National Hydrocarbons Company.

40 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products?

CEMAC customs tariffs will be applied for the exit of production from Cameroon to neighbouring countries, as Cameroon is not a member of the ECOWAS free trade agreement. However, residual exports are mainly shipped by boat.

Update and trends

Cameroon's resources remain largely unexploited. The mining industry remains a key opportunity for foreign investment. The government is actively encouraging new investment and the context for negotiating advantageous petroleum contracts is excellent. Despite production being superior to domestic requirements, the refinery capacity limitations mean that fuel has to be imported. The administration strongly wishes to implement the appropriate structures to remedy this situation. International funding is available for foreign investors wishing to come in. The political situation remains stable, though there are some difficulties in the extreme north at the boundary with Nigeria, as a consequence of spot attacks from the Boko Haram fundamentalist group.

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