

Oil Regulation 2021

Contributing editor
Bob Palmer



Publisher

Tom Barnes
tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent
adam.sargent@gettingthedealthrough.com

Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between April and May 2021. Be advised that this is a developing area.

© Law Business Research Ltd 2021
No photocopying without a CLA licence.
First published 2003
Eighteenth edition
ISBN 978-1-83862-691-4

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



Oil Regulation 2021

Contributing editor

Bob Palmer

Mayer Brown International LLP

Lexology Getting The Deal Through is delighted to publish the eighteenth edition of *Oil Regulation*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Ecuador and United Arab Emirates.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Bob Palmer of Mayer Brown International LLP, for his continued assistance with this volume.



London
May 2021

Reproduced with permission from Law Business Research Ltd
This article was first published in June 2021
For further information please contact editorial@gettingthedealthrough.com

Contents

Argentina	3	Japan	103
Hugo C Martelli and Bernardo Bertelloni Martelli Abogados		Kentaro Kubo TMI Associates	
Brazil	12	Mexico	110
David Meiler, Barbara Bittencourt, Nathália de Oliveira Souza and Brenda Falcão de Araújo Campos Mello Advogados		Rogelio Lopez-Velarde and Jorge Jiménez Dentons López Velarde SC	
Denmark	24	Myanmar	122
Johan Weihe, Per Hemmer and Rania Kassis Bech-Bruun		Khin Cho Kyi, Kana Manabe, Albert T Chandler and Nirmalan Amirthanesan Myanmar Legal MHM Limited	
Ecuador	34	Nigeria	131
Andrés Donoso, Rafael Valdivieso, Gustavo Almeida and Bruno Pesantes Robalinos Abogados Ecuador Ferec SA		'Gbite Adeniji, Jumoke Arowolo and Pacer Guobadia ENR Advisory	
Faroe Islands	43	Norway	140
Johan Weihe, Per Hemmer and Rania Kassis Bech-Bruun		Yngve Bustnesli Kvale Advokatfirma	
Ghana	52	Oman	152
Kimathi Kuenyehia, Sr, Sefakor Kuenyehia, Kafui Quashigah and Akua Pinamang Addae Kimathi & Partners Corporate Attorneys		Mansoor Jamal Malik and Hussein Azmy Al Busaidy Mansoor Jamal & Co	
Greenland	65	Peru	162
Johan Weihe, Per Hemmer and Rania Kassis Bech-Bruun		Augusto Astorga and Carlos Hamann CMS Peru	
Iraq	76	Thailand	172
Slava Kiryushin DWF LLP Hadeel Hasan Al Hadeel Al Hasan Law Firm		Nuanporn Wechsuwanarux, E T Hunt Talmage, III, David Beckstead, Tachatorn Vedchapun and Noraseth Ohpanayikool Chandler MHM Limited	
Italy	91	United Arab Emirates	181
Pietro Cavasola and Matteo Ciminelli CMS Italy		Richard Devine and Ana Severova Devine & Severova FZ LLC	
		United Kingdom	189
		Bob Palmer Mayer Brown International LLP	

Thailand

Nuanporn Wechsuwanarux, E T Hunt Talmage, III, David Beckstead, Tachatorn Vedchapun and Noraseth Ohpanayikool
Chandler MHM Limited

GENERAL

Key commercial aspects

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

The Thai petroleum concession has proven to provide a very stable foundation for investment in the oil and gas industry and downstream projects since 1971. However, Thailand has limited geological prospects for oil and gas. Thailand is a net importer of both oil and gas and its petroleum reserves are declining with increasing demand.

Given the present petroleum resource base and demand profile, Thailand will remain a net importer of hydrocarbons for the foreseeable future. Based on the Energy Statistics of Thailand BE 2563 (2020), provided by the Energy Policy and Planning Office (EPPPO), Thailand imported a total of 856Kbd (thousand barrels per day) of crude oil or approximately 87 per cent of consumption. Regarding the production of crude oil, in 2019, Thailand produced 126Kbd of crude oil, while Thailand produced 102Kbd of condensate. Natural gas plays a large role in satisfying Thailand's energy requirements. Based on the Energy Statistics of Thailand, Thailand produced 3,623 million standard cubic feet per day; whereas, the total importation rate of natural gas was 1,394 million standard cubic feet per day or approximately 28 per cent of consumption.

Major producers of crude oil are PTT Exploration & Production Public Company Limited, Chevron, CEC International, Ophir, Mubadala and Mitsui Oil Exploration Co Ltd.

Oil refineries are presently operated in Thailand by ExxonMobil (Esso), IRPC, ThaiOil, Bangchak, SPRC and PTTGC.

Further, petroleum products are marketed by PTTOR, ExxonMobil (Esso), Bangchak, Shell, Chevron (Caltex), ThaiOil, IRPC, SUSCO and PT (PTGenergy), among others.

Energy mix

2 | What percentage of your country's energy needs is covered, directly or indirectly, by oil or gas as opposed to nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production?

According to the Department of Alternative Energy Development and Efficiency, the breakdown of Thailand's final energy consumption in the first 11 months of 2020 is as follows:

- petroleum products: 47.7 per cent;
- electricity: 21.8 per cent;
- renewable energy (eg, wind, solar, bagasse, agricultural waste, municipal solid waste and biogas): 8.6 per cent;

- coal and lignite: 10.5 per cent;
- traditional renewable energy (eg, wood fuel, charcoal): 5.0 per cent; and
- natural gas: 6.4 per cent.

Based on the Energy Statistics of Thailand, the country's total crude oil procurement is 982Kbd. Approximately 13 per cent of the total crude oil procurement came from domestic supply, while the majority, approximately 87 per cent, was imported.

Government policy

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

No, there are a number of laws and notifications and a number of regulators. The Ministry of Energy (MOE) is responsible for administering the laws governing petroleum. Energy policy is managed by the EPPPO, the Office of the Permanent Secretary and the MOE.

EPPPO is responsible for the formulation of policy and regulations and for the management of oil and energy conservation funds. Its scope of authority includes natural gas, oil and energy.

Registering a licence

4 | Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

The website of the Department of Mineral Fuels (DMF) displays a list of all petroleum concessions in force. However, the DMF does not maintain a register that is open to the general public.

The annual report of the DMF is a public source of information on investments by concessionaires and on government income (eg, income tax, royalties and special remuneratory benefit). It includes a list of all outstanding concessions and details of ongoing investments, among others.

Legal system

5 | Describe the general legal system in your country.

Thailand is a civil law jurisdiction. The Constitution is the supreme law in the Thai legal system. Secondary sources of law under the Constitution are statutes, emergency royal decrees and royal decrees. Ministerial regulations, notifications and ordinances are commonly adopted pursuant to enabling statutes. Decisions and rulings of the judiciary and civil service are not binding but have considerable influence as precedents.

There is an independent judiciary that provides a forum for the settlement of disputes.

Although Thai is the language of the courts, most contracts between private parties may be executed in English or other foreign languages and may be governed by foreign law. Such contracts may also specify foreign or domestic arbitration as the dispute settlement mechanism. Foreign arbitration awards are enforced. However, foreign court judgments are not enforced by the Thai courts. Government agencies may be sued in the courts and cannot raise a defence of sovereign immunity. However, state property is not subject to execution.

Anti-corruption

The Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption BE 2561 (2018) sets forth and provides criminal liability for bribes from both natural and juristic entities to state officials. The Act also sets forth criminal liability for the state official who committed an act of receiving bribery and other criminal acts contained thereunder. The 2017 guidelines released by the National Anti-Corruption Commission in 2017, issued by virtue of the Act Supplementing the Constitution Relating to the Prevention and Suppression of Corruption BE 2542 (1999) (the old Act), provides a set of internal controls deemed appropriate for juristic entities to follow, in order to prevent an act of bribery towards a state official, a foreign state official and staff of an international organisation.

REGULATION OVERVIEW

Legal framework for oil regulation

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

Key legislation governing the legal framework regulating oil and gas activities includes the Petroleum Act, BE 2514 (1971), as amended (PA), and the Petroleum Income Tax Act, BE 2514 (1971), as amended (PITA). The PA is administered by the Department of Mineral Fuels (DMF), while the PITA is under the supervision of the Revenue Department. The domestic trading of oil and gas are also governed by the Fuel Oils Trading Act, BE 2543 (2000) and Fuel Oils Control Act, BE 2542 (1999). These two laws are administered by the Department of Energy Business (DOEB). Both the DMF and DOEB are part of the Ministry of Energy (MOE) and play a role in implementing the policy.

The natural gas sector is also regulated by the Energy Industry Act, BE 2550 (2007), supervised by the Energy Regulatory Commission.

Expropriation of licensee interest

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

No.

Revocation or amendment of licences

8 | May the government revoke or amend a licensee's interest?

Yes. Under sections 51 and 52 of the PA, the Minister of the MOE has the power to revoke a concession, production-sharing contract (PSC) and service contract (SC) for good cause, subject to providing time to rectify a default. Grounds for termination would also be found under clause 14 (Revocation of Concession) of the model form of petroleum concession and clause 16 (Termination of PSC) of the model form of PSC.

Regulators

9 | Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country. What sanctions for breach may be imposed by the regulatory and oversight bodies?

The government regulatory and oversight bodies that are principally responsible for regulating oil exploration and production activities include the DMF, the Energy Policy and Planning Office (EPPO) and the MOE.

The breach of the relevant laws and regulations may attract penalties on the entity, and, in some cases, any directors who collaborate to commit the offence or do not reasonably manage to prevent such offence will be penalised by fines and imprisonment.

Government statistics

10 | What government body maintains oil production, export and import statistics?

The Petroleum Institute of Thailand (PTT), a non-profit foundation established in 1985, is the best source of statistics on the petroleum and petrochemical business. It collects information from relevant government departments, including the DMF, the Department of Alternative Energy Development and Efficiency, the PTT, the DOEB, the Customs Department and the EPPO.

NATURAL RESOURCES

Title

11 | 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? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

Title to petroleum resources belongs to the government. Owners of surface land have no rights to the mineral resources underneath their land. No person may explore for or produce petroleum in any area, whether such an area is owned by such a person or other persons, except by virtue of a concession, production-sharing contract (PSC) or service contract (SC). For concessions, title to the petroleum passes to the concessionaire at the wellhead. However, for a PSC, title remains with the state at all times, and the contractor is compensated with oil. Under an SC, the contractor is paid for its services (presumably in cash), and never owns the petroleum.

Exploration and production – general

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

Oil exploration and production activity is conducted in Thailand both onshore and offshore. Certain areas are off-limits to exploration and production, including military areas, agricultural land reform areas and certain areas reserved for environmental conservation purposes.

Exploration and production – rights

13 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights? To what extent are the terms of licences or contracts negotiable?

The Department of Mineral Fuels (DMF) regulates petroleum exploration and production, under the supervision of the Petroleum Committee established under the Petroleum Act (PA).

Historically, the DMF awarded petroleum concessions through international bidding. Bids were lodged only for exploration blocks announced by the DMF. Other areas are closed to exploration by the private sector.

The Defence Energy Department has jurisdiction over some limited areas under its control and has the authority to grant licences to explore and produce, under the Notification of National Executive Council No. 331 issued in December 1972.

Although not expressly required by law, the Thai practice has been to award concessions only following the publication of an international invitation, usually after a minimum 45-day notice period.

Applications are evaluated on a points system by the Petroleum Committee, which forwards its recommendations to the cabinet for approval.

The PA provides that the concession, production-sharing contract (PSC) and service contract (SC) shall be in accordance with the form prescribed by a ministerial regulation issued under the PA. In the past, rights to explore for and produce petroleum were granted under petroleum concessions, in a form prescribed in Ministerial Regulation Prescribing Form of Petroleum Concession, BE 2555 (2012). The form for a PSC is prescribed by Ministerial Regulation Prescribing the Form for Production Sharing Contract, BE 2561 (2018). There is currently no form or model SC.

The Notification of Petroleum Committee on the Rules and Procedures for the Determination of the Area for Petroleum Exploration and Production by Concession, Production Sharing Contract or Service Contract BE 2560 (2017) shall be used for the determination of the regime applicable for the exploration and production of petroleum. In essence, an SC shall be used if the data indicates that there are at least 300 million barrels, or the cumulative production and the existing crude oil reserves of the whole area is at least 4 million barrels per petroleum well.

For an area where the possibility of discovering petroleum for commercial purposes in the regional petroleum geology where the area is located is higher than the possibility of discovering petroleum for commercial purposes in the country, the method for discovery and production is the PSC. Conversely, if the possibility of discovering petroleum for commercial purposes in the regional petroleum geology where the area is located is lower or equal to the possibility of petroleum discovery for commercial purposes in the country, the method for discovery and production through a petroleum concession.

Petroleum bidding for offshore blocks G1/61 and G2/61

The Ministry of Energy (MOE) issued an announcement dated 24 April 2018 inviting applications to produce petroleum in offshore block G1/61 (Erawan field) and G2/61 (Bongkot field). This bidding round specified that the PSC was to apply.

There was no condition requiring the applicant to register as a limited company under Thai law. Applicants were required to have adequate equipment, personnel and financial resources to perform exploration, production and disposition of petroleum. Applicants that did not satisfy these requirements were required to submit a guarantee from an affiliated entity (acceptable to the MOE) that did possess those resources.

Additionally, applicants were also required to provide evidence of having a strong financial status by having shareholder's equity of at least US\$4 billion and US\$2 billion in 2016–2017 for block G1/61 and block G2/61, respectively, as well as evidence of being an offshore gas field operator of at least one asset having production and distribution at a rate of at least 100 million cubic feet per day in 2016–2017. The winners of this bidding process were a consortium of PTTEP Energy Development Company Limited and MP G2 (Thailand) Limited for block G1/61 (Erawan field) and PTTEP Energy Development Company Limited for G2/61 (Bongkot field).

Twenty-third bid round

The 23rd round of bidding for petroleum exploration and production in three exploration blocks in the Gulf of Thailand was scheduled to open during April 2020. However, the MOE announced that the 23rd bid round will be delayed owing to the impact of the covid-19 pandemic and the global decline in oil prices.

Government participation

14 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 has no right to participate in a petroleum concession. Petroleum concessions do provide, upon discovery, for a majority Thai-owned company to acquire a participating interest on terms set forth in the conditions of bidding.

The conditions for the 23rd bid round have not been announced yet.

Petroleum bidding for offshore blocks G1/61 and G2/61

The bidding for offshore blocks G1/61 and G2/61 allowed for state participation. In this regard, the MOE allowed a government agency to participate as an investor in the PSC for the exploration and production of petroleum for offshore blocks G1/61 and G2/61 up to 25 per cent.

Royalties and tax stabilisation

15 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 any tax stabilisation measures in place?

Royalties

Rates of royalties under Thailand III concession terms, imposed at progressive rates, were as follows:

- up to 60,000bbl/m: 5 per cent;
- 60,000-150,000bbl/m: 6.25 per cent;
- 150,000-300,000bbl/m: 10 per cent;
- 300,000-600,000bbl/m: 12.5 per cent; and
- more than 600,000bbl/m: 15 per cent.

In deep-water blocks, the royalty is 70 per cent of the above rates. The government has the authority to fix lower rates in special situations.

Royalties under the new PSC are 10 per cent.

Royalties in cash are based on posted, realised or market price. Royalties in kind are volumes equivalent in value to royalties in cash. Royalty disputes are to be settled by court action, not by international arbitration.

Income tax

Petroleum concessionaires are also subject to income tax under the Petroleum Income Tax Act, as follows:

- income tax is 50 per cent on profits (or 35 per cent on profits plus 23.08 per cent remittance tax, under Royal Decree), payable biannually;
- revenues, deductions and taxes for all Thailand III blocks of the same concessionaire may be consolidated. Other blocks of the same concessionaire must be consolidated separately;
- capital costs are generally amortised over five to 10 years (accelerated depreciation permitted);
- operating costs, royalties and special remuneratory benefit (SRB) are expensed;
- revenues on crude oil sales are based on the realised price or, for exports, on the higher of the realised or 'tax reference' price, the latter being the posted price with a discount;
- there is 10-year loss carry-forward and no loss carry-back; and
- contractors under PSCs are subject to income tax at 20 per cent.

Special remuneratory benefit

In addition to royalties, petroleum concessionaires under Thailand III terms are subject to SRB, a form of excess 'windfall profits' tax adopted in 1989.

The SRB is payable only in years that the concessionaire has 'petroleum profit'. In calculating such profit or loss, capital expenditure, operating costs, a special reduction (an expense 'uplift') for the year and petroleum loss carried forward indefinitely from prior years may be deducted. The 'special reduction' was specified as zero per cent. SRB is calculated by an exploration block at the following rates, subject to a ceiling of 75 per cent of petroleum profit:

Income per metre of well	Special remuneratory benefit
Up to 4,800 baht	None
4,801-14,400 baht	1 per cent per 240 baht increment. A fraction of 240 baht shall be treated as 240 baht.
14,401-33,600 baht	1 per cent per 960 baht increment. A fraction of 960 baht shall be treated as 960 baht.
More than 33,600 baht	1 per cent per 3,840 baht increment. A fraction of 3,840 baht shall be treated as 3,840 baht.

To determine the 'income per metre of well', annual petroleum profit is first calculated and then adjusted for inflation and exchange rates. Income per metre of well equals this adjusted annual petroleum profit divided by the total depth of all wells drilled during the concession period plus the geological stability factor. The geological stability factor is fixed for each geological region and is at least 150,000 metres higher in difficult drilling areas.

Surface rentals

No surface rentals are payable.

Stabilisation measures

There is no tax stabilisation legislation. However, clause 12 of the model form of petroleum concession includes broad stabilisation language in respect of all basic benefits, rights and duties. Clause 12 of the prescribed form of PSC includes similar stabilisation language.

Licence duration

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

The duration of a concession under Thailand III terms is:

- exploration period – six years, with a three-year renewal period; and
- production period – 20 years from the end of the exploration period, with a 10-year renewal.

The model form of PSC does not specify the duration of the exploration period but provides for one extension not exceeding three years (clause 2(1)). It does not specify the duration of the petroleum production period but provides for one extension not exceeding 10 years (clause 2(6)). We expect the initial durations will be stated in the announcement of the next bid round.

Extent of offshore regulation

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

Thailand published the limits of its continental shelf for the purposes of mineral exploration.

In 1979, Thailand and Malaysia agreed on a joint-development area to resolve a dispute about marine boundaries. In 1997, Thailand and Vietnam agreed marine boundaries in the Gulf of Thailand. There is a substantial offshore area between Thailand and Cambodia that is subject to overlapping claims, referred to as the 'overlapping claims area' (OCA). Currently, negotiations are contemplated to resolve the OCA issue, though the degree of progress being made with these negotiations is not clear. Thailand and Myanmar agreed on their lateral boundary on 25 July 1980.

Onshore offshore regimes

18 | 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?

There is no difference between onshore and offshore regimes in Thailand. There are different regulations in place for 'deep sea' exploration, but the MOE regulates both exploration and production.

Authorised E&P entities

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

Applicants for petroleum concessions must be a company (either Thai or foreign in the latest bidding round) and have the equipment, personnel and financial resources capable of performing exploration and development work obligations.

The PA sets forth the basic qualifications of bidders for petroleum concessions, which may be further specified in the invitation to bid.

Regulatory powers over operators

20 | What controls does the regulatory body have over operators? Can operatorship be revoked?

The PA is silent on joint operating agreements (JOAs) and on the roles of the operator under a JOA. In the past, the DMF has shown no interest in JOAs. The model PSC includes clause 20 (Joint Operating Agreement), which prescribes certain rules applicable to JOAs. The DMF is not a party to a JOA, but must be kept informed about amendments to the JOA and related matters.

Joint ventures

21 | What is the legal regime for joint ventures?

Generally, contractual joint ventures are not recognised under Thai law, except for joint ventures for income tax purposes (as defined in section 39 of the Revenue Code) and joint ventures under the PA. The PA does not prescribe any rules concerning joint ventures other than that parties to a joint venture are jointly and severally liable for their mutual obligations.

At present, there is no requirement that the joint venture agreement or JOA between the joint venture partners be approved, filed or registered.

Reservoir unitisation

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

Section 72 of the PA provides that the government may order unitisation. However, there are no regulations governing how this power is to be exercised.

Thailand and Malaysia cooperate on a joint development area in the Gulf of Thailand under the auspices of a joint authority. The overlapping claims area between Thailand and Cambodia has stalled exploration and production, as this dispute has not yet been resolved.

Licensee liability

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

There is no express limit on the liability of a concessionaire under the petroleum concession or contractor under a PSC. If there are multiple concessionaires or multiple contractors under a PSC, the petroleum companies will be jointly and severally liable for the obligations under the governing instrument.

Guarantees and security deposits

24 | Are parental guarantees or other forms of economic support common practice or a regulatory requirement? Are security deposits required in respect of any work commitment or otherwise?

Parent company guarantees are required under section 24 of the PA in cases where the applicant for concession does not 'have capital, machinery, equipment, tools and specialists' to explore for, produce, sell and dispose of petroleum. There are no regulations prescribing the criteria for an acceptable guarantor, but section 24 of the PA grants the MOE wide discretion in this regard. In practice, the MOE almost always requires a parent company guarantee.

In the G1/61 and G2/61 bidding round, bidders were required to provide a bid bond of 3 million baht per block. In addition, once a PSC contractor was selected, a performance guarantee of 5 million baht was required.

LOCAL CONTENT REQUIREMENTS

Minimum requirements

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

In a number of sectors, there are requirements to use local goods and services. There are a number of laws that require majority Thai ownership. Under the Foreign Business Operations Act, many businesses

(including petroleum service business) are subject to restrictions, and require foreign service companies to obtain 'foreign business licences'. However, exploration and production are not subject to any general foreign ownership limitations.

Social programmes

26 | Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.

Most petroleum concessions include 'special advantages', such as scholarships, training, contributions to support petroleum development and community development, among others.

The Ministerial Regulation Prescribing Production Sharing Contract, BE 2561 (2018) provides that 'special advantages' shall be in accordance with 'invitation for proposal' or as per the PSC's contractor offer.

TRANSFERS TO THIRD PARTIES

Approval to transfer interests

27 | 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?

The Petroleum Act (PA) permits farm-in arrangements (under section 47); transfers of concessions to affiliates (under section 48); and transfers to third parties (under section 50). Under section 48, a concessionaire may transfer its interest in a concession to certain affiliates by notifying the Ministry of Energy (MOE). The MOE may require a substitute parent company guarantee, depending on the circumstances. The transfer will take effect from the date on which the MOE confirms that the transfer was made in compliance with section 48.

Under section 50 of the PA, transfers of concessions to third parties require permission from the Minister of the MOE after obtaining approval from the Petroleum Committee. Transferees must possess all qualifications under the PA to be eligible to receive a concession block from the transferor. There is no prescribed timeline but, in practice, it may take between three to six months (or longer) to obtain this approval.

The PA does not include provisions concerning 'change of control' (except those arising from transfers of interests in a concession).

The government has no pre-emptive rights.

Approval to change operator

28 | Is government consent required for a change of operator?

In principle, no. However, if a change of operator is proposed in connection with a requested change in the concessionaire under section 50 of the PA, then the Minister of the MOE is likely to take into account the qualifications of the potential transferee in considering the transfer application.

Transfer fees

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

Transfers of interests in a petroleum concession may trigger income tax liabilities.

Changes of control by way of a transfer of shares in a parent company outside Thailand do not trigger income tax liabilities in Thailand.

TITLE TO FACILITIES AND EQUIPMENT

Title holder

30 Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of a licence, PSC or service contract?

The concessionaire is the owner of facilities and equipment used in exploration and production activities during the term of the concession. However, in the production-sharing contract and service contract regimes, the title to facilities and equipment belongs to the state.

At the end of the concession term, if the state deems that the facilities or installation can be useful for further usage, the relevant authority may serve a written notice on the concessionaire identifying which installations are to be delivered to the state. The concessionaire shall deliver them without charge within one year of date of execution of the agreement between the state agency and the concessionaire.

DECOMMISSIONING AND ABANDONMENT

Laws and regulation

31 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 Petroleum Act (PA) provides the director-general of the Department of Mineral Fuels (DMF) with the authority to prescribe regulations concerning decommissioning activities. Section 80/1 of the PA outlines the general rule that the concessionaire will be responsible for decommissioning works, while section 80/2 is concerned with the requirement of the concessionaire to make a security deposit to ensure that it will be financially responsible for those decommissioning works. The specific procedures, rules and timelines outlined under section 80/1 and 80/2 of the PA are to be in accordance with ministerial regulations on decommissioning.

The Ministerial Regulation on Decommissioning (2016) requires the concessionaire to submit a decommissioning plan (divided into an initial decommissioning plan and a final decommissioning plan); an estimate of decommissioning costs; a decommissioning environmental assessment report; and a best practical environmental option report to the director-general within prescribed timelines.

The obligation of the concessionaire to begin the decommissioning process will be triggered by any of the following:

- the concessionaire not using the installations continuously for more than one year;
- petroleum reserves of the concession are less than 40 per cent of the sum of the accumulated petroleum production and the petroleum reserves;
- the remaining time for petroleum production as specified in the concession is five years; or
- the concessionaire wants to commence decommissioning activities.

The estimated decommissioning costs and decommissioning plan must be audited by an authorised third party based on qualifications prescribed by the director-general of the DMF and published in the Government Gazette. The director-general of the DMF has the authority to accept the decommissioning reports or request clarifications or amendments if the reports are not in compliance with the prescribed rules.

The concessionaire will be obligated to make a security deposit to the director-general of the DMF, which may be in the form of:

- cash or a cashier check payable by a bank;
- Thai government bonds;
- a letter of guarantee issued by a bank;
- an irrevocable standby letter of credit; or
- any other security prescribed by the director-general and announced in the Government Gazette.

The security deposit will be for an amount approved by the director-general of the DMF that must not be less than the estimated decommissioning cost. Failure to make an adequate security deposit will result in a written warning from the director-general of the DMF, and exposure to a surcharge of 2 per cent per month of the unpaid amount.

The decommissioning regulation leaves a few rules and procedures open, to be determined later by the director-general of the DMF. There have been four notifications of the DMF relating to decommissioning issued in 2018 and 2019 providing:

- a checklist of information needed for the decommissioning and estimation of decommissioning cost report;
- details as to the report and plan for the environmental management upon decommissioning;
- details on the consideration of security, placement of security and renewal of security for decommissioning; and
- the form for the placement of security for decommissioning.

Security deposits for decommissioning

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

Under the Ministerial Regulation on Decommissioning, BE 2559 (2016), the concessionaire is obligated to make a security deposit.

TRANSPORTATION

Regulation

33 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 are a few private pipelines for the transportation of oil products. However, the transportation of crude oil and petroleum products is regulated by the Department of Energy Business under the Fuel Oil Control Act, BE 2542 (1999) and the Fuel Oil Trading Act, BE 2543 (2000).

Other government bodies are concerned with the transportation of petroleum, which may be subdivided into the following categories:

- marine – Water Transport and Merchant Marine Department and the Ministry of Transport (MOT);
- railway – State Railways of Thailand; and
- tanker trucks – Department of Land Transport and the MOT.

COST RECOVERY

Determining recoverable costs

34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.

Under the new production-sharing contract (PSC) regime, all actual expenses in petroleum operations are to be borne by the contractor and deducted from production, as detailed in the contract, and in accordance with work plans and budgets approved by the director-general

of the Department of Mineral Fuels (such approval is required annually under section 53/4 during the term of the contract). Deductions may not exceed 50 per cent of the value of total production. If actual expenses exceed 50 per cent in any year, the excess can be deducted in the following year, as long as such expenses for that year do not exceed 50 per cent. Up to 50 per cent of the remainder of the total production, after deduction and payment of royalty, shall be shared between the state and the contractor, and the contractor's share shall not exceed 50 per cent. The contractor is to pay a royalty of 10 per cent on the total production.

Under the Petroleum Income Tax Act (PITA), as amended, a company that is a party to a PSC must pay income tax of 20 per cent of the net profits from the petroleum business. PITA does not mention service contracts. Therefore, a party to such a contract is subject to the general income tax under the Revenue Code of 20 per cent.

HEALTH, SAFETY AND ENVIRONMENT

Requirements

35 What health, safety and environment requirements apply to upstream oil-related facility operations onshore and offshore? What government body is responsible for this regulation; what enforcement authority does it wield? What kind of record-keeping is required? What are the penalties for non-compliance?

The Occupational Safety, Health and Environment Act, BE 2554 (2011) generally governs the duty of an employer to arrange and maintain safe and hygienic working conditions and environment for its employees, as well as to support and promote the work operation of employees in order to prevent harm to life, and the physical and mental health of its employees. This regulation also applies to employees working in upstream oil-related operations onshore and offshore.

Ministerial regulations issued under such Act provide standards for the workplace in regard to light, heat and sound to provide a safe and healthy workplace environment. Ministerial regulations issued under the Act also provide guidelines on fire prevention and safety measures in relation to work related to electricity and dangerous chemicals, construction, among others.

Concessionaires and contractors are subject to the following labour and environmental legislation of general application:

- the Labour Protection Act, BE 2541 (1998);
- Ministerial Regulation No. 7 BE 2541 (1998) issued under the Labour Protection Act, BE 2541 (1998);
- the National Environmental Quality Act, BE 2535 (1992); and
- the Fuel Oil Trading Act, BE 2543 (2000).

The Labour Protection Act, as amended, is administered by the Ministry of Labour and Welfare and applies to any employer with 10 or more employees. The labour inspection officer, appointed by the Minister, enforces the act, which covers all general employment practices, including the terms and conditions of employment, occupational safety and health, and environmental conditions. Non-compliance with the Act may result in fines of 2,000 baht or one month's imprisonment or both.

Under the National Environmental Quality Act, the Ministry of Natural Resources and Environment, in conjunction with the National Environment Board, prescribes categories of industrial projects subject to regulation and approval by the Office of Natural Resources and Environmental Policy and Planning. An environmental impact assessment report must be filed before receiving approval for a regulated industrial project.

The Fuel Oil Trading Act under the administration of the Department of Energy Business requires major oil traders who trade 100,000Mmt

(million metric tonnes) of oil (or 50,000Mmt of liquefied natural gas) or more each year to obtain a licence from the Ministry of Energy and to keep records regarding the purchase, refining, production and disposal of fuel oil. Penalties under the act include licence revocation, imprisonment and fines.

LABOUR

Local and foreign workers

36 Must a minimum amount of local labour be employed? What are the visa requirements for foreign labour? Are there anti-discrimination requirements? What are the penalties for non-compliance?

The Working of Aliens Act, BE 2521 (1978) and the Foreign Working Management Emergency Decree, BE 2560 (2017) mandate work permits for foreign nationals working in Thailand. The procedures to obtain a work permit are cumbersome and require advance planning to assemble the necessary supporting documents. One of the requirements to apply for a work permit is a non-immigrant (class B) visa. Section 69 of the Petroleum Act provides a procedure that facilitates the issuance of work permits, which is administered by the Department of Mineral Fuels and the Petroleum Committee.

A number of laws provide for labour protection, labour courts, unions, provident funds, social security, among others. The key law is the Labour Protection Act, which prescribes general rules relating to employment. Ministerial Regulation No. 7, BE 2541 (1998) issued under the Labour Protection Act specifically provides labour protection to employees working in the petroleum industry, namely work time, holiday, overtime payment, holiday payment, as well as working condition for women in relation to drilling, refining and manufacturing of chemicals.

The Skill Development Promotion Act, BE 2545 (2002) requires business operators employing 100 or more employees to provide skills training each year.

Concessionaires and production-sharing contractors are required to employ Thai nationals to the maximum extent possible and to train Thai nationals to improve their skills so that they are qualified to take up positions at all levels in petroleum operations within a reasonable period of time.

TAXATION

Tax regimes

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

Petroleum concessionaires are subject to income tax at 50 per cent under the Petroleum Income Tax Act, which is administered by the Revenue Department of the Ministry of Finance. Concessionaires may also be subject to the special remuneratory benefit.

Contractors under production-sharing contracts are subject to income tax at 20 per cent.

Petroleum service companies and operators of transportation, marketing and distribution activities are subject to income tax at 20 per cent under the Revenue Code, which is also administered by the Revenue Department.

The Excise Tax Act, BE 2527 (1984) applies to the production and sale of certain petroleum products.

COMMODITY PRICE CONTROLS

Crude oil mining

38 | 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?

Export sales are made at a 'free-on-board' posted price fixed by the concessionaire or production-sharing contractor and agreed to by the government. Domestic sales, in the absence of regular exports, are made at a price not exceeding that of imported crude oil; otherwise, they are made at the average realised price of exports by all concessionaires.

The government from time to time prescribes prices for the retail sale of petroleum products.

Retail petroleum companies are required to make contributions to the Oil Fund.

COMPETITION

Competition enforcers

39 | What government bodies have the authority to prevent or punish anticompetitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?

The Trade Competition Act, BE 2560 (2017) was enacted in 2017 and came into force on 7 October 2017. The Trade Competition Commission remains the government body with general regulatory oversight for anticompetitive or unfair practices, other than in sectors with specific trade competition regulations. Crude oil and crude oil products are not under supervision of any specific trade competition regulations; they are governed by Trade Competition Act.

Obtaining clearance

40 | What is the process for procuring a government determination that a proposed action does not violate any competition laws? How long does the process generally take? What are the penalties?

A request may be made to the Office of the Trade Competition Commission (TCC) for a ruling on whether a proposed action violates the Trade Competition Act. The TCC is the regulator with supervisory authority for the Trade Competition Act. Sections 54 and 55 of the new Trade Competition Act proscribe specific conduct that is anticompetitive or an abuse of a dominant operator's market power. These include:

- jointly, with a competitor, operating in the same market, fixing the purchase or sales prices, or other conditions of the price of goods or services, either directly or indirectly;
- jointly, with a competitor, operating in the same market, limiting the quantity of goods or services that each operator will produce, purchase or sell;
- jointly, with a competitor, operating in the same market, to allocate geographical areas will each operator will sell, or to generally reduce the purchase of goods and services;
- jointly, with a competitor, operating in the same market, to knowingly establish an agreement on conditions in order for one side to win an auction or to win in a bid of goods or services in order to allow another operator not to bid in the same auction for goods or services;
- to reduce the quality of goods or services to a condition lower than previously produced or sold;
- to appoint or assign any one person to exclusively sell the same goods or provide the same services, or of the same type;

- to set conditions or practices for purchasing or producing goods or services so that the practice follows the agreed terms; and
- other types of joint agreements in other manners as prescribed by the TCC.

The Trade Competition Act divides regulated mergers into two categories: those which require approval (a pre-merger filing) from the TCC and those which only require notification to the TCC (a post-merger notification). Essentially, submission of a pre-merger filing will be required if the merger may result in the creation of either a monopoly, or a business operator with a dominant market position. Otherwise, the merging entity (or merging entities) must notify the TCC within seven days after the completion of the merger if the merger may substantially lessen competition of the market.

DATA

Seismic data

41 | Who holds title to seismic data collected during the term of and on termination of a licence, PSC or service contract? Can the regulator require the data owner to report or release the data?

The Petroleum Act (PA) is silent on title to seismic and other data. However, according to section 76 of the PA, a concessionaire and party to a production-sharing contract shall report the results of the petroleum business operation and annual working plan and budget to the Department of Mineral Fuels (DMF). The report shall include details and data since the exploration of petroleum began. One year after the DMF received such information, it may be made available to the public.

INTERNATIONAL

Treaties

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

Thailand is a party to a number of international treaties, bilateral investment protection treaties and double tax agreements, including those of the World Trade Organization.

Thailand is a member of the Association of Southeast Asian Nations (ASEAN), which, in December 2015, integrated its economy with nine other regional economies to form the ASEAN Economic Community (AEC). The five core elements of the AEC are:

- free flow of goods;
- free flow of services;
- free flow of investment;
- free flow of capital; and
- free flow of skilled labour.

ASEAN members have ratified enhanced dispute resolution mechanisms under the ASEAN Protocol on Enhanced Dispute Settlement Mechanisms (2004), and member states afford one another certain investment guarantees, as agreed within the ASEAN Comprehensive Investment Agreement (2009), with the goal of economic integration in line with the AEC blueprint. Thailand was chair of ASEAN in 2019.

ASEAN integration includes plans for the interconnection of current and planned pipelines among member states. Such integration will require regulators and governments to collaborate, creating a regulatory framework for trans-border trading energy and natural gas.

Thailand is not a party to the International Centre for Settlement of Investment Disputes 1965 or the Extractive Industry Transparency Initiative index but is a party to the United Nations Convention on the

Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention) and the United Nations Convention on the Law of the Sea (UNCLOS) of 1982.

Foreign ownership

43 | 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?

Petroleum concessions may be 100 per cent foreign-owned. A foreign operator must have a registered branch or subsidiary in Thailand.

Retail petroleum businesses are subject to ceilings on foreign ownership of businesses under the Foreign Business Operations Act, BE 2542 (1999).

Oil refinery business is not restricted activity for foreign companies or individuals. In addition, it is a promoted activity under the Investment Promotion Act, BE 2520 (1977).

Cross-border sales

44 | Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?

Cross-border sales or deliveries of crude oil and products are subject to Customs Department and, with respect to products, Excise Department regulation.

UPDATE AND TRENDS

Current trends

45 | What are the current trends in your jurisdiction? What can we expect in the near future? Are there current proposals to change the regulatory or statutory frameworks? What areas may be of particular interest to foreign investors?

The submission of the right for the exploration and production of petroleum in the Gulf of Thailand under a new bid round, which is known as the 23rd bid round, was scheduled to be held in April 2020. However, owing to the covid-19 pandemic, the Ministry of Energy decided to postpone receiving applications.

In addition, according to press reports, some petroleum concessionaires are disputing their purported decommissioning obligations under the Petroleum Act, which has resulted in the initiation of arbitration against the Ministry of Energy.

Additional pending issues for Thailand include:

- a form service contract has yet to be announced;
- ongoing negotiations of the Thailand-Cambodia overlapping claims area; and
- developments with the decommissioning rules.

Coronavirus

46 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

There is no legislation, relief programmes or other initiatives that the state has implemented to address the pandemic.

CHANDLER MHM

Nuanporn Wechsuwanarux

nuanporn.w@mhm-global.com

E T Hunt Talmage, III

talmage@mhm-global.com

David Beckstead

david.b@mhm-global.com

Tachatorn Vedchapun

tachatorn.v@mhm-global.com

Noraseth Ohpanayikool

noraseth.o@mhm-global.com

36th Floor, Sathorn Square Office Tower
98 North Sathorn Road
Silom
Bangrak
Bangkok 10500
Thailand
Tel: +66 2009 5000
www.chandlermhm.com

Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security			
Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)