



## CMHM Newsletter

### Decommissioning of Upstream Petroleum Installations: Unfinished Business

One of the most significant unresolved issues relating to decommissioning of offshore installations in Thailand relates to financial liability for decommissioning where ownership of the installations has been transferred to the state. The relevant laws and regulations on this subject are: the Petroleum Act B.E. 2514 (1971), as amended, (the “**Petroleum Act**”) and the Ministerial Regulation Prescribing Plans and Estimated Costs and Security for Decommissioning of Installations Used in the Petroleum Industry, B.E. 2559 (2016) (the “**Decommissioning Regulation**”). The concession agreement entered into between the Ministry and the concessionaire (the “**Concession Agreement**”) also prescribes rights and obligations on concessionaires and the state.

The Petroleum Act provides a general framework of a concessionaire’s duty to be responsible for the decommissioning of petroleum installations, whereas the Decommissioning Regulation outlines specific requirements, such as the submission of a Decommissioning Plan (divided into an Initial Decommissioning Plan and a Final Decommissioning Plan).<sup>1</sup> The Decommissioning Regulation also requires concessionaires to submit an Estimate of Decommissioning Costs, a Decommissioning Environmental Assessment Report, and a Best Practical Environmental Option Report to the Director-General of the Department of Mineral Fuels, Ministry of Energy (“**DMF**”) within prescribed timelines.<sup>2</sup>

The legal landscape with respect to the decommissioning of offshore installations is still developing, which makes planning for petroleum producers somewhat difficult. Representatives from concessionaires are in regular contact with the DMF, meaning they are aware of, and able to comment on, proposed regulations and notifications relating to decommissioning. However, while current concessionaires may be in contact with the DMF and therefore be able to glean a degree of information regarding regulatory updates directly, outside investors may be less aware of the legal landscape. This can negatively impact the evaluation of target assets in M&A transactions, for example.

All upstream petroleum production in Thailand is currently being

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<sup>1</sup> The Ministry of Energy promulgated the Ministerial Regulation Prescribing Plans and Estimated Costs and Security for Decommissioning of Installations Used in the Petroleum Industry, B.E. 2559 (2016) at s. 3.

<sup>2</sup> Ibid at s. 3 and 4.

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undertaken by private producers pursuant to a concession regime. The terms of the concession agreement are prescribed by Ministerial Regulation, and contain language relating to the concessionaire's obligations at the end of the concession term, including any extensions.

Clause 15(4) of the Concession Agreement prescribed by the Thailand III terms requires the concessionaire to "deliver up to the Government of Thailand free of charge" all installations used in upstream petroleum production, or to remove such installations "in accordance with the Minister's instruction within three months from the date of the instruction".

This clause obligates the concessionaire is to transfer usable assets to the state "free of charge", and to remove (and therefore assume financial liability for) assets which "are not usable". The DMF therefore needs to assess the foreseeable financial returns for maintaining the assets against the costs of their decommissioning, either in the present or at a future date.

Section 22 of the Decommissioning Regulation, elaborates on the obligations of the concessionaire with respect to the delivery of installations. The section reads as follows:

Section 22. For the purpose of compliance with the petroleum concession requirements, in the case where the state deems it fit for utilization of the installations, in whole or in part, the Director-General shall serve a written notice on the concessionaire which installations to be delivered to the State, not less than two years prior to the decommissioning activity or prior to termination of the petroleum production period or the extended petroleum production period, whichever is first, and the concessionaire shall deliver such installations to the State without charge within one year of the date of execution of the agreement between the state agency taking the delivery and the concessionaire.

The concessionaire remains responsible for decommissioning of the installations so delivered under paragraph one, unless otherwise provided in the agreement between the government agency taking delivery and the concessionaire.

Agreement on delivery of installations shall be compliant as prescribed and announced by the Director-General in the Government Gazette.

Section 22 of the Decommissioning Regulation, and particularly paragraph 2, impose additional financial obligations to be assumed by the concessionaire. While the Concession Agreement does not impose financial liability on the concessionaires to decommission assets that have been transferred to the State, the Decommissioning Regulation imposes this obligation on producers.

It is worth noting that the DMF has issued a Notification pursuant to

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Section 22 of the Decommissioning Regulation.<sup>3</sup> In essence, the Notification requires the concessionaire to transfer a specific sum to the DMF concurrently with the transfer of assets at the expiry of the concession. The decommissioning cost to be transferred by the concessionaire is based on the below equation:

$$\text{Cost of removing installation} = \frac{\text{Estimated cost of removal} * \text{Cumulative production}}{\text{Estimated ultimate recoverable resources}}$$

In exchange for payment of these costs, the asset transfer agreement will apparently contain provisions which limit the concessionaire's liability with respect to the delivered assets. As the precise wording of the asset transfer agreement has not yet been made public, it is difficult to ascertain whether there will be any other potential setbacks in this respect.

### **Conclusion**

With limited new investments occurring in Thailand's upstream sector in the past decade, decommissioning has been the subject of greater attention in recent years. The number of concessions approaching the end of their term, along with the transition to the production sharing contract regime, has increased the relevance of decommissioning obligations. Investors in brownfield projects must take care in ensuring they fully understand the legal risks in this area.

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This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact person(s) at Mori Hamada & Matsumoto or Chandler MHM Limited, or any of the Key Contacts listed in the far-right column.

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<sup>3</sup> Notification of the Department of Mineral Fuels Re: Rules, Procedures and Conditions for Preparation of Reports and Plans under Decommissioning Environmental Management Process, 12 June 2018.