

# Oil Regulation

*Contributing editor*  
**Bob Palmer**



**2017**

GETTING THE  
DEAL THROUGH

GETTING THE  
DEAL THROUGH 

# Oil Regulation 2017

*Contributing editor*

**Bob Palmer**

**CMS Cameron McKenna Nabarro Olswang LLP**

Publisher  
Gideon Robertson  
gideon.roberton@lbresearch.com

Subscriptions  
Sophie Pallier  
subscriptions@gettingthedealthrough.com

Senior business development managers  
Alan Lee  
alan.lee@gettingthedealthrough.com

Adam Sargent  
adam.sargent@gettingthedealthrough.com

Dan White  
dan.white@gettingthedealthrough.com



Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 3708 4199  
Fax: +44 20 7229 6910

© Law Business Research Ltd 2017  
No photocopying without a CLA licence.  
First published 2003  
Fourteenth edition  
ISSN 1742-4100

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 in June 2017. Be advised that this is a developing area.

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



## CONTENTS

<b>Angola</b>	<b>5</b>	<b>Malaysia</b>	<b>109</b>
Tiago Machado Graça CMS Rui Pena & Arnaut		Christopher Lee and Loy Ee Lin Christopher & Lee Ong	
Filipa Tavares Lima FTL Advogados			
<b>Argentina</b>	<b>12</b>	<b>Mexico</b>	<b>118</b>
Hugo C Martelli and Florencia Hardoy Martelli Abogados		Juan Carlos Serra Campillo and Jorge Eduardo Escobedo Montaña Basham, Ringe y Correa SC	
<b>Brazil</b>	<b>19</b>	<b>Morocco</b>	<b>125</b>
Giovani Loss and Felipe Feres Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados		Marc Veillot CMS Bureau Francis Lefebvre Maroc	
<b>Croatia</b>	<b>30</b>	<b>Mozambique</b>	<b>132</b>
Miran Maćešić, Ivana Manovelo and Anja Grbeš Maćešić & Partners		Tiago Machado Graça CMS Rui Pena & Arnaut	
<b>Denmark</b>	<b>37</b>	Francisco Avillez, Oldivanda Bacar and Bergentino Américo ABCC Advogados	
Per Hemmer, Johan Weihe and Rania Kassis Bech-Bruun		<b>Myanmar</b>	<b>139</b>
<b>Egypt</b>	<b>45</b>	Khin Cho Kyi and Thaw Dar Sein Myanmar Legal Services Limited	
Girgis Abd El-Shahid and Donia El-Mazghouny Shahid Law Firm		<b>Nigeria</b>	<b>145</b>
<b>Faroe Islands</b>	<b>51</b>	Soji Awogbade, Ishaya Amaza and Otasowie Izekeor ÆLEX	
Per Hemmer, Johan Weihe and Rania Kassis Bech-Bruun		<b>Norway</b>	<b>153</b>
<b>Ghana</b>	<b>58</b>	Yngve Bustnesli Kvale Advokatfirma DA	
Kimathi Kuenyehia Sr, Sarpong Odame and Akua Serwaa Asomani-Adem Kimathi & Partners, Corporate Attorneys		<b>Portugal</b>	<b>162</b>
<b>Greenland</b>	<b>67</b>	Rui Pena and Mónica Carneiro Pacheco CMS Rui Pena & Arnaut	
Per Hemmer, Johan Weihe and Rania Kassis Bech-Bruun		<b>Tanzania</b>	<b>172</b>
<b>Iran</b>	<b>76</b>	Saidi Othman Yakubu and Timothy Kyepa Yakubu and Associates Chamber	
Bob Palmer and Amir Kordvani CMS Cameron McKenna Nabarro Olswang LLP		<b>Thailand</b>	<b>177</b>
<b>Iraq</b>	<b>85</b>	Albert T Chandler and Christopher C Kalis Chandler MHM Limited	
Matthew Culver and Blair Jones CMS Cameron McKenna Nabarro Olswang LLP		<b>United Kingdom</b>	<b>184</b>
<b>Italy</b>	<b>95</b>	Bob Palmer CMS Cameron McKenna Nabarro Olswang LLP	
Pietro Cavasola and Matteo Ciminelli CMS Adonnino Ascoli & Cavasola Scamoni		<b>United States</b>	<b>195</b>
<b>Japan</b>	<b>104</b>	Robert A James and Stella Pulman Pillsbury Winthrop Shaw Pittman LLP	
Kentaro Kubo TMI Associates		<b>Venezuela</b>	<b>207</b>
		Miguel Rivero and José Alberto Ramírez Hoet Pelaez Castillo & Duque	

# Thailand

Albert T Chandler and Christopher C Kalis

Chandler MHM Limited

## General

The Petroleum Act (PA) and the Petroleum Income Tax Act (PITA) are in the final stages of amendments, which will among other provisions introduce production-sharing contracts and risk-service contracts in addition to petroleum concessions. The cabinet has approved the establishment of a committee to conduct a feasibility study on whether a national oil corporation should be established.

There are two major gas fields (Erawan and Bongkot), which will expire in 2021 and 2022. Instead of amending the PA to allow an additional extension, the current government is heading for an end-of-concession scenario, data room and bidding exercise.

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

The key commercial aspects of the oil sector are best summarised by the following data from the 2016 petroleum balance.

In 2016, Thailand imported a total of 852,218 barrels per day (bbl/d) of crude and condensate (including condensate import as petrochemical feedstock of 22,430 bbl/d), while 163,080 bbl/d of indigenous crude and 94,489 bbl/d of indigenous condensate were procured for local consumption. Thailand imported natural gas (from Myanmar and as LNG) totalling 1,428 million standard cubic feet per day (MMscf/d) in 2016.

Natural gas plays a large role in satisfying Thailand's energy requirements. Production of indigenous natural gas (excluding MTJDA) decreased from 3,302 MMscf/d in 2012 to 3,245 MMscf/d in 2016.

The government is actively promoting alternative energy projects and approved a 15-year alternative energy plan in January 2009. A new 10-year alternative energy plan was approved in November 2011. These projects will affect requirements for oil and oil products. Thailand completed the construction of and began operations in its first LNG receiving terminal on 6 September 2011 in Map Ta Phut industrial estate. PTT LNG's expansion of the LNG terminal is scheduled to be completed in the second quarter of 2017. The facility can currently offtake and unload up to 5 million tons of LNG a year (700 MMscf/d) and consists of two 160,000-cubic-metre LNG storage tanks and a port for all sizes of LNG vessels from 125,000 to 264,000 cubic metres. Expansion of the terminal will add a second 5 million ton unit, bringing the capacity of the receiving terminal up to 10 million tons of LNG a year (1,400 MMscf/d). In 2016, Thailand imported (calculations based on 11-month totals) 70 kboe/d (thousands of barrels of oil equivalent per day) of LNG.

Thailand is a net importer of both oil and gas. Given the present petroleum resource base and demand profile, Thailand will remain a net importer of hydrocarbons for the foreseeable future.

Major producers of crude oil are PTT Exploration & Production Public Company Limited (PTTEP), Chevron, CEC International, Pan Orient and Mubadala.

The following oil refineries presently operate in Thailand: Esso, IRPC (formerly Thai Petrochemical Industry), ThaiOil, Bangchak, SPRC and PTTGC.

Petroleum products are marketed by the following companies: PTT, Esso, Shell, Chevron (Caltex), Bangchak, IRPC, ThaiOil, WP, PTTRM, Siam Gas, PTG, SUSCO, etc.

### 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?

According to Department of Alternative Energy Development and Efficiency (DEDE), the breakdown of Thailand's final energy consumption in 2016 was as follows:

- petroleum products, 45 per cent;
- petroleum, 17 per cent (eg, condensate, methane, ethane, NGL);
- coal/lignite, 6 per cent;
- electricity, 18 per cent;
- renewable energy (eg, wind, solar, bagasse, agricultural waste, MSW, biogas, paddy husk), 8 per cent; and
- traditional renewable energy (eg, wood fuel, charcoal) 6 per cent.

Of the country's total crude oil procurement for local consumption in 2016, 164.9 kbd (16 per cent) came from domestic supply, while the majority, 838.1 kbd (84 per cent), had to be imported. Of the country's domestic crude supply, 134.1 kbd were used locally, while only 30.9 kbd were exported.

### 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 Energy Policy and Planning Office, the Office of the Permanent Secretary and the MoE.

The Energy Policy and Planning Office of the MoE 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, hydropower and alternative sources of energy.

### 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 Minerals 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 MoE/DMF is a very transparent source of information on investments by concessionaires and government income (income tax, royalties and special remuneratory benefit (SRB)). It includes a list of all outstanding concessions and details of ongoing investments, etc.

### 5 Describe the general legal system in your country.

The modern Thai legal system dates from the reign of King Chulalongkorn in 1868. The Ministry of Justice was established in 1892. The Thai Bar Association was established in 1914, with members that include judges, prosecutors, practising lawyers, professors and others. The legal and accounting professions are regulated under professional licensing systems, which encourage high standards of service.

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

Government agencies may be sued in the courts and cannot raise a defence of sovereign immunity. However, state property is not subject to execution.

There is a Thai civil service that administers laws and regulations with a high degree of consistency and is largely free from political influences. Few, if any, decisions in a normal business transaction or investment project require going above the civil service for a political decision.

There are four basic codes: the Civil and Commercial Code, the Criminal Code, the Civil Procedure Code and the Criminal Procedure Code. In adopting these codes early in the last century, Thailand selected features from the two Western legal systems (common law and civil law) adapting them to the circumstances in Thailand. In addition, there are the Land Code, the Revenue Code and hundreds of special laws and regulations governing most areas of commercial activity, many of them drafted and implemented with the assistance of international legal advisors. Decisions and rulings of the judiciary and civil service are not binding but have considerable force as precedents.

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 a foreign jurisdiction or 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.

### Regulation overview

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

The following key laws and regulations make up the principal legal framework regulating oil activities:

- the Petroleum Act, BE 2514 (1971), as amended;
- the Petroleum Income Tax Act, BE 2514 (1971), as amended; and
- numerous ministerial regulations, notifications and announcements.

Amendments to the PA and PITA were enacted on 22 June 2017, effective 23 July 2017.

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

No.

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

The following government regulatory and oversight bodies are principally responsible for regulating oil exploration and production activities:

- the Energy Regulatory Commission ([www.erc.or.th](http://www.erc.or.th));
- the DMF ([www.dmf.go.th](http://www.dmf.go.th));
- the Energy Policy and Planning Office (EPPO, formerly NEPO) ([www.eppo.go.th](http://www.eppo.go.th));
- the MoE ([www.moe.go.th](http://www.moe.go.th));
- the Ministry of Finance ([www.mof.go.th](http://www.mof.go.th)); and
- the PTT Public Company Limited (PTT Plc) ([www.pttplc.com](http://www.pttplc.com)).

PTTEP ([www.pttep.com](http://www.pttep.com)) is the state oil company and is separate to the regulatory and oversight bodies.

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

The Petroleum Institute of Thailand (PTIT) is the best source of statistics on the petroleum and petrochemical business. It collects statistics from concerned government departments, including the DMF, DEDE, PTT, DOEB, Customs Department and EPPO.

The PTIT was established in 1985, with support from public, academic and private sectors, to operate as a non-profit foundation. Some of the PTIT's publications include:

- *PTIT Focus*, published monthly with one additional annual issue;
- *Thailand's Petroleum Exploration and Production Fact Book*;

- *Thailand Petroleum and Petrochemical Complex Capacity*;
- *Petrochemical Products Classification*;
- *Petroleum Encyclopedia*; and
- *Petrochemicals Encyclopedia*.

The PTIT website is [www.ptit.org](http://www.ptit.org).

### 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? 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 subsurface mineral resources underneath their land. Under the Minerals Act, the consent of the surface owner is required for issuance of a mining lease for minerals. There is no equivalent rule with respect to petroleum resources, but production permits require an environmental impact assessment report to be approved and the acquisition of surface land necessary for production, storage and transportation facilities.

Title to oil passes to the offtaker at the wellhead delivery point.

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

The DMF website ([www.dmf.go.th](http://www.dmf.go.th)) includes up-to-date summaries of exploration and production activity, and exploration blocks open for bid.

Another source of information is the PTIT (see question 9).

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

The DMF regulates petroleum exploration and production, under the supervision of the Petroleum Committee established under the Petroleum Act.

Rights to explore for and produce petroleum are granted under petroleum concessions, in a form prescribed in Ministerial Regulation Prescribing Form of Petroleum Concession, BE 2555 (2012).

The DMF awards petroleum concessions by international bidding. Bids may be 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 and has the authority to grant licences to explore and produce, under NEC No. 331 re benefits, Energy Department, 13 December 1972.

Although not expressly required by law, the Thai practice is 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.

### 20th round

The MoE issued an announcement dated 28 May 2007 inviting applications for petroleum concessions. Applications could be filed during a one-year period and were considered monthly after the 15th day of each month. An application for a block subject to a previous application would not be accepted until consideration of the earlier application was completed.

In general, the invitation prescribed the usual conditions applicable to recent rounds. There was no condition that each applicant must register as a limited company under Thai law. The condition that a company must have paid-up capital of at least 100 million baht was first omitted in the 19th round.

Each application was graded according to the following system:

- petroleum exploration programme and expenditure and work obligations – 80 points; and
- special advantages, such as scholarships, training, contributions to support petroleum development in Thailand, state participation after discovery, etc – 20 points.

The 20th round of bidding required for the first time that these special advantages must include:

- on approval of a 'production area', the offer of an interest of not less than 5 per cent to a majority Thai-owned company, subject to reimbursement of its share of past expenditures and bearing its share of future expenditures; and
- the use of petroleum service contractors and equipment available in Thailand.

Applications and supporting documents were submitted to the DMF. If an applicant did not have adequate equipment, personnel and financial resources to perform the exploration programme, the applicant was also required to submit a guarantee from an entity that did have those resources. Applicants could also offer to provide a bank guarantee.

Applications could be filed for 65 exploration blocks located onshore and in the Gulf of Thailand.

Detailed descriptions of the exploration blocks and of the geological constant factors and special reductions of each block were set forth in the announcement, which may be found at [www.dmf.go.th](http://www.dmf.go.th).

### 21st round

In October 2014, the 21st bid round was announced for exploration and production licences for 22 onshore and offshore oil and gas sites, with a combined area of 43,000 square kilometres. Bids were due in February 2015. The 21st bid round was postponed and then cancelled in March 2015. The prime minister has ordered delays for the National Legislative Assembly to amend the petroleum law, to allow certain blocks to be granted under PSCs. It is reported that several alternatives to the current petroleum concession system are being considered.

### 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 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 of bidding in the 20th bid round dated 23 May 2007 included the following.

After a production has been first correctly defined in the concession block, the applicant must propose in its special advantages to have a Thai juristic person (established under the laws of Thailand with Thai nationals holding more than 50 per cent in it), with the approval of the Petroleum Committee, to acquire an undivided participating interest of not less than 5 per cent under the concession. Such juristic person shall reimburse the applicant for the expenditures incurred from the block prior to the date of its participation according to its participating interest share and bear its participating interest share of all the expenditures incurred in the block from the date of its participation.

The conditions of bidding for the 21st bid round included additional obligations of concessionaires.

### 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?

#### Royalties

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

- up to 60,000 bbl/d – 5 per cent;
- 60,000 to 150,000 bbl/d – 6.25 per cent;
- 150,000 to 300,000 bbl/d – 10 per cent;
- 300,000 to 600,000 bbl/d – 12.5 per cent; and
- over 600,000 bbl/d – 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 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, not by international arbitration.

### Special remuneratory benefit

In addition to royalties, petroleum concessionaires under Thailand III terms are subject to the special remuneratory benefit (SRB), a form of excess profits tax adopted in 1989.

SRB is a 'windfall profits' tax, 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	SRB
Up to 4,800 baht	None
4,801 to 14,400 baht	1 per cent per 240 baht increment
14,401 to 33,600 baht	1 per cent per 960 baht increment
Over 33,600 baht	1 per cent per 3,840 baht increment

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.

### Income tax

Petroleum concessionaires are also subject to income tax under the Petroleum Income Tax Act, BE 2514 (1971), as amended.

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 semi-annually.

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 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.

### 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.

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

The duration 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.

### Commercial field test

This requires production plans and reports, and government approval of amendments to plans.

There is an obligation to produce within four years, with possible deferrals of two years each.

### Government sole risk option

This is exercisable after a 12-month negotiation period. If the government does not proceed within two years, the concessionaire may request return of the area.

If the government proceeds and realises profits, the concessionaire will be reimbursed its costs. The concessionaire may elect to enter into a joint venture with the government for a period of three years.

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

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

Thailand and Malaysia agreed in 1979 on a joint development area to resolve a dispute about marine boundaries. In 1997, Thailand and Vietnam agreed on 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 area'. Thailand and Myanmar agreed on their lateral boundary on 25 July 1980.

**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?**

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 (see questions 7 and 8).

**18 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 assets and personnel capable of performing exploration and development work obligations.

Prior to the 20th bidding round, successful applicants are required to register a limited company under Thai law, with paid-up capital of at least 100 million baht. In the 20th bidding round, qualified foreign companies were able to be awarded concessions. The Petroleum Act sets forth the basic qualifications of bidders for petroleum concessions, which may be further specified in the invitation to bid (for further discussion of the 20th round, see question 12).

The conditions of bidding will state whether there are any restrictions on companies applying for a petroleum concession. A concessionaire under the 20th bid round could be a Thai company or a foreign company. If a foreign company were awarded a concession, it would need to register a branch.

**19 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 Petroleum Act. The Petroleum Act does not prescribe any rules concerning joint ventures other than that parties to a joint venture are jointly and severally liable for the obligations of the concessionaire. A petroleum concession with two or more exploration and production companies will include a provision naming the operator of the joint venture.

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

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

Section 72 of the Petroleum Act provides that the government may order unitisation. However, there are no regulations governing how this power is to be exercised. Drafting a regulation that addresses unitisation is part of the present law reform programme of the Department of Mineral Fuels.

**21 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.

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

Parent company guarantees are required under section 24 of the Petroleum Act in cases in which 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 who is the parent whose guarantee is required.

In the 21st bid round, petroleum concessionaires are required to post both parent company guarantees and bank guarantees to secure their work obligations. The mandatory requirement to provide bank guarantees was introduced in the announcement of 21st bid round on 21 October 2014. The deadline for submission of bids was 18 February 2015. Bids must include bid security of baht 3 million per block, and a letter of intent to place a performance bond to secure expenditure obligations and physical work obligations. The 21st bid round was cancelled in March 2015.

**Local content requirements**

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

In a number of sectors, there are requirements to use local goods and services. There are a number of laws which require majority Thai ownership. Under the Foreign Business Operations Act, 43 businesses (including petroleum service business) are subject to restriction, and require foreign service companies to obtain 'foreign business licences'.

**24 Describe any local content requirements likely to apply to oil companies operating in your country.**

Undertakings to use local goods and services are a factor in the award of petroleum concessions. The model form of petroleum concessions include obligations to use the services of Thai vessels and Thai contractors for equipment and services to offshore production platforms. The conditions of bidding for the 21st bid round include as factors in the award of concessions and 'special incentives' which might include covenants to use specific local equipment and services.

**25 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, etc.

**Transfers to third parties**

**26 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?**

Under section 50 of the Petroleum Act, 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 Petroleum Act in order to be eligible to receive a concession block from the transferor.

The Petroleum Act 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.

**27 Is government consent required for a change of operator?**

Transfers of concession and changes of operator between affiliated companies are governed under section 48 of the Petroleum Act according to the following rules:

- if the concessionaire was granted the concession before 4 August 1989 (Thailand I):
  - the concessionaire shall notify the director general of the DMF in writing of a change of operator and fix the effective date of such change, which would be done simultaneously with the transfer of the concession. Note that no approval from DMF is required in this case; and
- if the concessionaire was granted the concession after 4 August 1989 (Thailand III):
  - the concessionaire shall notify the director general of the DMF in writing of the change of operator, which would be done simultaneously with the transfer of concession; and
- the transfer shall become effective only when the concessionaire receives a letter from the director general advising that the transfer was made correctly in accordance with the law. It is possible in

some cases that the DMF will pass the application for transfer of concession to the minister of the MoE.

Transfers of concession and changes of operator under section 50 of the Petroleum Act:

- where the concessionaire transfers such concession to another company that is not governed under the conditions of section 48:
  - the concessionaire shall notify the director general of the DMF in writing of the change of operator, which would be done simultaneously with the transfer of concession; and
  - the transfer shall become effective only when the concessionaire receives approval from the minister of the MoE; and
- for a change of operator among co-concessionaires:
  - the concessionaire shall notify the director general of the DMF in writing of the change of operator. Under this scenario, an approval for a change of operator is not required; as such the DMF will suggest that the company effect the change of operator after it has received an acknowledgement letter from the DMF. While no approval from the DMF is required, it should be noted that it will take approximately one month for the DMF to issue the acknowledgement letter.

### 28 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 under the Petroleum Income Tax Act.

Changes in control do not trigger income tax liabilities.

### Title to facilities and equipment

#### 29 Who holds title to facilities and equipment used for oil exploration, development and transportation activities?

There currently is no requirement for concessionaires to transfer title to facilities and equipment to the DMF. However, the recent MR on Decommissioning contemplates the transfer of title to facilities and equipment that pass to the government upon expiry of concession. See question 30.

### Decommissioning

#### 30 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?

During the 4th Petroleum Forum, an overview of pending legislation was provided for Thailand's decommissioning guidelines. The DMF, along with related government agencies, petroleum operators and the PTT, formed a Decommissioning Task Force to develop Thailand Decommissioning Guidelines of Upstream Installations. The requirements presented involve a four-stage Decommissioning Environmental Management Plan. All stages require consultation and approval by the DMF. The four stages are:

- preparation of a decommissioning environmental assessment report;
- selection of the best practical decommissioning option;
- preparation of a decommissioning environmental management plan and a post-decommissioning monitoring plan; and
- verification of implementation of the decommissioning environmental management plan and post-decommissioning monitoring plan.

On 29 January 2016, the Decommissioning Ministerial Regulation was issued. The Decommissioning Regulations provide a framework for addressing some of the issues, but there are a number of issues unresolved.

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

At present, no security deposits are required.

### Update and trends

The subjects of Thailand III Terms, the form of contract (petroleum concession versus production sharing contract), royalty rates and other subjects have been discussed at high levels during recent years. For the 21st bid round announced on 21 October 2014, the form of contract and royalty rates were retained, but some bidding conditions were amended. The 21st bid round was cancelled on 26 February 2015 pending proposed amendments to the PA.

Amendments to the PA and PITA were enacted on 22 June 2017.

The major amendments include:

- amending section 23 (concession application and form) of the Petroleum Act, BE 2514, adding division 3/1 (production sharing contract) to allow the government to use the production sharing contract system, adding division 3/2 (service contract) to allow the government to use the service contract system, and authorising the Ministry of Energy to set the rules and procedures for these systems; and
- amending division 7-ter (specific provisions governing joint development zone) of the Petroleum Income Tax Act, BE 2514, to apply to the production sharing contract system.

Additional pending issues:

- expiring concessions, 2022–2023;
- Thailand–Cambodia OCA resolution; and
- decommissioning rules.

### Transportation

#### 32 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?

Under present government policy, PTT has a monopoly on the natural gas pipeline business. There are a few private pipelines for the transportation of oil products.

There are a number of government bodies 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 (the MOT);
- railway – State Railways of Thailand; and
- tanker trucks – Department of Land Transport and the MOT.

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

The 2000 Fuel Oil Trading Act aims to limit the potentially adverse impact of fuel transport on the environment, persons and property. Under the act, the MoE's department of energy business regulates the storage, transportation, use and disposal of fuel oils, including issuing specifications for containers used in transport. Oil fuel transporters must obtain licences under the act.

### Cost recovery

#### 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.

Currently, exploration and production are conducted under petroleum concessions. Under pending amendments to the PA and introduction of PSCs and RSCs, the measure of recoverable costs will be prescribed.

### Health, safety and environment

#### 35 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?

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

- 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 of 1998, as amended in 2008, 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 Environmental 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 is administered by the Department of Energy Business, a subdivision of the MoE. It requires major oil traders who trade 100,000 metric tonnes of oil (or 50,000 metric tonnes of liquefied natural gas) or more each year to obtain a licence from the MoE and to keep records regarding the purchase, refining, production and disposal of fuel oil. Penalties under the act include licence revocation, imprisonment and fines.

**36 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?**

The Fuel Oil Trading Act governs the composition and quality of fuel oils and outlines inspection measures to ensure that fuel traders comply with the quality-control regulations. The Energy Business Department issues notifications prescribing the composition and quality of petroleum products. Penalties under the act include licence revocation, imprisonment and fines.

#### Labour

**37 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?**

The Working of Aliens Act, BE 2521 (1978) mandates 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.

There are a number of laws providing for labour protection, labour courts, unions, provident funds, social security, etc. A key law is the Labour Protection Act, BE 2541 (1998), which prescribes rules of employment. The Skill Development Promotion Act, BE 2545 (2002) requires business operators employing 100 or more employees to provide skills training each year.

A concessionaire is required to employ Thai nationals to the optimum extent possible and train Thai nationals in order to improve their skills to such extent that they are qualified to take up positions at all levels in petroleum operations within a reasonable period of time.

#### Taxation

**38 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, BE 2514 (1971), which is administered by the Revenue Department of the Ministry of Finance.

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. They are also subject to VAT at 7 per cent.

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

#### Commodity price controls

**39 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 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, trade and merger control

**40 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?**

Under the Energy Industry Act, BE 2550 (2007) the Energy Regulatory Commission regulates competition in the energy industry operation and prevents abusive use of monopoly power.

## CHANDLER MHM

Albert T Chandler  
Christopher C Kalis

albert.chandler@chandlermhm.com  
chris.k@chandlermhm.com

7th–9th and 16th Floors, Bubhajt Building  
20 North Sathorn Road, Silom, Bangrak  
Bangkok 10500  
Thailand

Tel: +66 2 266 6485  
Fax: +66 2 266 6483  
www.chandlermhm.com

The Trade Competition Act, BE 2542 (1999) established the Trade Competition Commission and prohibits certain practices that might lead to a monopoly or unfairness in competition.

---

**41 What is the process for procuring a government determination that a proposed action does not violate any anticompetitive standards? How long does the process generally take?**

A request may be made to the Office of the Trade Competition Commission for a ruling on whether a proposed action violates the Trade Competition Act.

---

**International**

---

**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, double tax treaties, etc.

Thailand is not a party to the ICSID Convention.

Thailand is not a party to the Extractive Industry Transparency Initiative index.

---

**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.

Refineries and retail petroleum businesses are subject to ceilings on foreign ownership of businesses under the Foreign Business Operations Act, BE 2542 (1999), the Land Code and other laws.

---

**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.

## Getting the Deal Through

Acquisition Finance  
Advertising & Marketing  
Agribusiness  
Air Transport  
Anti-Corruption Regulation  
Anti-Money Laundering  
Arbitration  
Asset Recovery  
Automotive  
Aviation Finance & Leasing  
Banking Regulation  
Cartel Regulation  
Class Actions  
Commercial Contracts  
Construction  
Copyright  
Corporate Governance  
Corporate Immigration  
Cybersecurity  
Data Protection & Privacy  
Debt Capital Markets  
Dispute Resolution  
Distribution & Agency  
Domains & Domain Names  
Dominance  
e-Commerce  
Electricity Regulation  
Energy Disputes  
Enforcement of Foreign Judgments  
Environment & Climate Regulation

Equity Derivatives  
Executive Compensation & Employee Benefits  
Financial Services Litigation  
Fintech  
Foreign Investment Review  
Franchise  
Fund Management  
Gas Regulation  
Government Investigations  
Healthcare Enforcement & Litigation  
High-Yield Debt  
Initial Public Offerings  
Insurance & Reinsurance  
Insurance Litigation  
Intellectual Property & Antitrust  
Investment Treaty Arbitration  
Islamic Finance & Markets  
Labour & Employment  
Legal Privilege & Professional Secrecy  
Licensing  
Life Sciences  
Loans & Secured Financing  
Mediation  
Merger Control  
Mergers & Acquisitions  
Mining  
Oil Regulation  
Outsourcing  
Patents  
Pensions & Retirement Plans

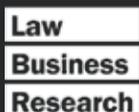
Pharmaceutical Antitrust  
Ports & Terminals  
Private Antitrust Litigation  
Private Banking & Wealth Management  
Private Client  
Private Equity  
Product Liability  
Product Recall  
Project Finance  
Public-Private Partnerships  
Public Procurement  
Real Estate  
Restructuring & Insolvency  
Right of Publicity  
Securities Finance  
Securities Litigation  
Shareholder Activism & Engagement  
Ship Finance  
Shipbuilding  
Shipping  
State Aid  
Structured Finance & Securitisation  
Tax Controversy  
Tax on Inbound Investment  
Telecoms & Media  
Trade & Customs  
Trademarks  
Transfer Pricing  
Vertical Agreements

Also available digitally



# Online

[www.gettingthedealthrough.com](http://www.gettingthedealthrough.com)



Oil Regulation  
ISSN 1742-4100



THE QUEEN'S AWARDS  
FOR ENTERPRISE:  
2012



Official Partner of the Latin American  
Corporate Counsel Association



Strategic Research Sponsor of the  
ABA Section of International Law