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THAILAND PETROLEUM LAW

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The subjects of Thailand III Terms, form of contract (petroleum concession vs. 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 conditions of bidding were amended. The 21st bid round was cancelled on 26 February 2015 pending proposed amendments to the Petroleum Act (PA) and the Petroleum Income Tax Act (PITA).

Amendments to the PA and PITA were drafted by the Department of Mineral Fuels (DMF), approved on 7 February 2017 by the Cabinet and promulgated by the National Legislative Assembly (NLA) on 30 March 2017. They were published in the Government Gazette on 22 June 2017, and came into effect on 23 June 2017.

These Acts established two new contractual regimes for exploration and production: the production sharing contract (PSC) and the service contract (SC). The major changes include:

1. Amending Section 23 (Concession application and form) of the PA, and adding Division 3/1 (Production Sharing Contract) re: allowing the government to use production sharing contracts, adding Division 3/2 (Service Contract) allowing the government to use those contracts, and authorizing the Ministry of Energy to set the rules and procedures for each system.
2. Amending Division 7 quarter (specific provisions governing PSCs) of the PITA to apply to that contract system. On 9 March 2018, a MR prescribing form of Production Sharing Contract was published.

As of 14 December 2018, the government has not published forms SC (three forms of SC are mentioned in the 2017 amendments to the PA). The government published the following ministerial regulations on 9 March 2018:

1. MR prescribing remittance of royalty by the production sharing contractor, B.E. 2561;
2. MR prescribing fees for concession, production sharing contract and service contract, B.E. 2561;
3. MR prescribing form of production sharing contract, B.E. 2561; and
4. MR prescribing rules, procedures and conditions for applying for and obtaining the right to be a production sharing contractor, B.E. 2561.

In December 2017, the new Minister of Energy, Dr. Siri Jirapongphan, said that two public tenders will be conducted in 2018:

1. Auctions of the Bongkot and Erawan gas blocks in the Gulf of Thailand. The current concessions on these fields expire in 2022 and 2023, respectively. The tender documents were issued in April 2018. On 14 December 2018 there were news reports that PTTEP received Cabinet approval for both blocks (in the case of Erawan, with a subsidiary of Mubadala Petroleum (Thailand) Ltd.)

2. **New 21st bid round for rights to explore, develop and produce petroleum in 22 blocks (6 in northern and central regions, 11 in the northeast, and 5 in the Gulf of Thailand). No notice of the 21st bid round has been issued.**

Additional pending issues:

- **Thailand Cambodia overlapping claims area (OCA) resolution**
- **Decommissioning rules**

Industry and Legislative History

Prior to 1954, the right to explore for petroleum was reserved exclusively for government agencies, and exploration by the Defense Energy Department led to discovery of the Fang basin in Chiang Mai Province. Between 1954 and 1960, exploration permits were awarded under the mining laws to two private Thai companies, who were not successful.

In the early 1960's, agreements were signed with Union Oil and Raphael Pumpelly for areas in northeastern Thailand, under the general provisions of the mining law. In 1964, the offshore areas in the Gulf of Thailand also attracted the attention of major international oil companies.

In 1967, the government introduced a concession system, under a document entitled "Consideration Bases in Applying for Petroleum Exploration and/or Production." The Ministry of National Development then invited applications to explore, and the Council of Ministers approved the award of rights to six major oil companies. Agreements in an abbreviated form were signed with these companies in 1968. Under these agreements the Ministry agreed to issue concession agreements when a new petroleum law came into effect.

In 1971, Thailand promulgated the original Petroleum Act and Petroleum Income Tax Act. The PA established a concession system based on the Consideration Bases, and nine Ministerial Regulations were issued in 1971 dealing with major subjects under that act. The PITA established an income tax system applicable only to concessionaires, with tax rates between 50% and 60%. A tax rate of 50% was prescribed by a Royal Decree. Three Ministerial Regulations were issued in 1971 under the PITA.

The Petroleum Act (No. 2) was enacted in 1973. It relaxed area limitations, restrictions on transfer of obligations, mandatory relinquishment requirements and royalty rates for offshore blocks with water depths over 200 meters (deep water blocks). The Petroleum Income Tax Act (No. 2) was also promulgated in 1973. It provided for increased discounts on posted prices for tax purposes of petroleum produced from deep water blocks. Exploration in deep water blocks of the Andaman Sea has, so far, proven unsuccessful.

In 1973, Union Oil Company made the first natural gas discovery, in the Erawan Field in the Gulf of Thailand. The company was concerned about the creditability of Thai taxes under U.S. law, as the PITA prohibited the deduction of "interest" in the calculation of taxable income. After negotiations between the Thai government and the US Internal Revenue Service, the Petroleum Income Tax Act (No. 3) was enacted in 1979. Its provisions applied only to Union Oil. Thereunder, "interest" is recognized as a deductible expense, provided the concessionaire has withheld tax at the rate of 50% on payments of interest income. Income tax rates for concessionaires falling within that Act are fixed at 35% to 48% (presently 35%) on profits and 23.08% on dividends or other after-tax remittances. The effective rate thus remains 50%, as prescribed for all other concessionaires.

In 1980, the government announced a one-year ban on the export of petroleum in the context of negotiations with concessionaires for the purchase of condensate and to prevent the diversion of oil supplies under long-term contracts. This ban was renewed annually through 1990, but it has not been

imposed since then. In 1981, Shell discovered crude oil onshore in the Sirikit Field, in Kamphaeng Phet Province.

In 1982, new terms were prescribed as “conditions of bidding” for onshore blocks, in a period of rising oil prices. Additional concessions were awarded, but following the drop in oil prices and the discovery of small and marginal fields, those terms deterred further onshore activity.

The fall of oil prices in 1986, and other circumstances led the government to review its concession terms. Another factor was the difficulty of some companies to obtain permission to produce marginal or isolated wells, due to the need to demonstrate commerciality according to certain economic criteria. For crude oil, for example, each well had to demonstrate a recovery of costs within 12 years. In July 1987, Ministerial Regulation No. 13 under the PA was announced. It allowed wells in the same structure to be consolidated for purposes of applying the economic test. The definition of “production area” was also broadened, to include geological, seismic and other information, in addition to drilling data.

In 1989, the Petroleum Act (No. 4) and the Petroleum Income Tax Act (No. 4) were enacted and substantially amended the PA and the PITA. These changes were reflected in the terms of the 13th bid round invitation for concession applications, issued in July 1990.

After adoption of Thailand III terms for new petroleum concessions in 1989, there were no major amendments to the Petroleum Act until 2007. (Petroleum Act (No. 5) B.E. 2534 (1991) dealt only with a consequential amendment to Section 70 (import free of duty) arising from introduction of VAT and deletion of business tax under the Revenue Code.) However, significant new terms were introduced by way of conditions of bidding.

In 2007, the Petroleum Act (No. 6) and the Petroleum Income Tax Act (No. 6) were enacted and amended the PA and the PITA. However, the fiscal terms, as modified for the 20th bidding round, remain largely unchanged, and are set forth in Annex 2.

Purposes of amendments in PA (No. 6) included:

- Revisions which are more suitable to small fields and complex geology, marginal fields and fields having declining production.
- Provisions to clarify environmental management.
- Provisions to reduce and streamline steps for approvals.
- Provisions to better compete with other countries for investors.

The following four Ministerial Regulations were published in the Government Gazette on 1 August 2012:

- MR (repealing 3 & 16): rules, procedures and conditions for applying for petroleum concessions
- MR (repealing 4 & 17): form of petroleum concession
- MR (repealing 5 & 12): reporting requirements; standards of operations
- MR (repealing 6 & 11): safety zones

The new form of petroleum concession provided for arbitration according to the UNCITRAL Rules instead of the Rules of the International Court of Justice of 6 May 1946.

2017 Amendments to PA and PITA

The Petroleum Act (No. 7) and the Petroleum Income Tax Act (No. 7) were enacted in March 2017 to establish the PSC and SC contract regimes.

Amendments to Section 23 of the PA include the additions that exploration and production of petroleum now require the application for, and the grant of a PSC, SC or concession. The authority to determine which form is appropriate will be vested with the Ministry of Energy, with rules and procedures to be published with the approval of the Council of Ministers.

Amendments to the PA in regard to PSCs include general terms and conditions that are to be included in the contract. Significant features of such contracts include the following:

1. 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 the work plan and budget approved by the Director-General (such approval is required annually under Section 53/4 during the term of the contract). Deductions may not exceed 50% of the total production. If actual expenses exceed 50% in any year, the excess can be deducted in the following year, as long as such expenses for that year do not exceed 50%. Up to 50% of remainder of the total production, after deduction and payment of royalty, shall be shared with the contractor (Sections 53/3(1) and 53/3(2(a, b, and c)));
2. The portion of production owned by the State may either be sold or disposed of by the State, or by the contractor at the State's request (Section 53/3(5));
3. Ownership of all construction materials, equipment, properties and facilities used in petroleum operations acquired by the contractor is to be vested in the State; and
4. Certain provisions of Division 3 of the PA on Petroleum Exploration and Production under concessions also apply to PSCs, notably as to grant, renewal and revocation of rights; duration and renewal of exploration and production periods; demarcation, award and relinquishments of exploration blocks; award of production areas; and transfer of rights.
5. The contractor is to pay a royalty of 10% on the total production.

Amendments to the PA in regard to SCs also include general terms and conditions that are to be included in such contracts. Significant features of such contracts include the following:

1. Remuneration, calculation and payment of remuneration may be made in petroleum production or money, and only upon commercial production (Section 55/11(4));
2. The term of petroleum exploration and production shall not exceed 30 years, with reasons for early termination to be included in the contract (Section 55/11(5));
3. Rules, procedures, work plan, reporting procedures and conditions of measurement are to be included in the production/exploration contract (Section 55/11(6-8));
4. Like PSCs, SCs require annual approval of a work plan and budget by the State, with expenses for petroleum operations to be borne by the contractor, and total production is to be owned by the State. The State may dispose of or sell any portion of its production, or may request the contractor to do so (Section 53/11(1-4));
5. Money received by the government from the sale or disposal of production is to be first paid as a royalty, with the remainder to be paid as remuneration and expenses under the production/exploration contract. The remainder, if any, is to be remitted to the Treasury (Section 53/14); and
6. The government is to pay a royalty of 10% on the petroleum produced (Section 53/17).

For the adoption of the PSC form, the PITA has likewise been amended. Under its Section 65 quater vicies, a company that is a party to a PSC must pay income tax of 20% of the net profits from the petroleum business. The PITA does not mention SCs. Thus, a party to such a contract is subject to the general income tax under the Revenue Code of 20%.

Administration

Until 2002, the Petroleum Act was administrated by the Ministry of Industry through the Oil Fuels Division of the Department of Mineral Resources. On 1 October 2002, responsibility for administrative of the Petroleum Act was transferred to a new ministry, the Ministry of Energy. (See Dr. Twarath Sutabutr, “Establishing of Thailand’s New Energy Ministry”, and PTIT Special Annual Issue 2002.)

The Petroleum Income Tax Act is administered by the Ministry of Finance through the Revenue Department. Section 7 of the Investigation Division, Revenue Department, is responsible for concessionaires under the PITA.

Most decisions under the PA are made by the Petroleum Committee, an inter-ministerial committee established under Section 15 of the Act with the specific powers listed in Section 16.

Concessions

Although not expressly required by law, the Thai practice has been to award concessions only following the publication of an international invitation, usually on at least 45 days’ notice. Applications were evaluated on a points system by the Petroleum Committee, which forwards its recommendations to the Cabinet for approval.

Most concession terms and conditions are prescribed in the PA and its regulations. The standard concession form was initially set out in 1971 in Regulation No. 4. It includes only 18 sections. In 1989, a new concession form was prescribed in Regulation No. 17. In 2012 a new concession form was prescribed in MR published on 1 August 2012. In practice, concession applicants are rarely permitted to negotiate changes to the standard terms.

New Procedures in 18th Bid Round

On 19 July 2000, the Department of Mineral Resources issued a letter enclosing an announcement of the Ministry of Industry dated 11 July 2000 inviting applications for petroleum concessions. However, unlike all previous rounds, applications could be filed during a period of three years, and would be considered monthly after the 15th day of each month. The last day for the first submission was 15 August 2000. An application for a block subject to a previous application would not be accepted until consideration of the earlier application was completed.

The invitation prescribed the usual conditions applicable to recent rounds. Successful applicants were required to register a limited company under Thai law, with paid up capital of at least Baht 100 million.

Each application would be graded according to the following system:

1. Petroleum exploration program and expenditure and work obligations: 70 points.
2. Special advantages, e.g. scholarships, training or contributions to support petroleum development in Thailand: 30 points.

Applications and supporting documents were submitted to the Department of Mineral Resources. If an applicant did not have adequate equipment, personnel and financial resources to perform the exploration program, a guarantee from an entity which did have those resources had to be submitted.

Detailed description of the exploration blocks, and the geological constant factors and special reductions of each block were set forth in the announcement.

By allowing the filing of applications at monthly intervals, the new procedure avoided the long delays inherent in the classical system. Ten applications for 13 blocks were filed during the 18th bid round, which concluded in July 2003. Nine blocks were awarded.

New Procedures in 19th Bid Round

The Minister of Energy issued an announcement dated 1 July 2005 inviting applications for petroleum concessions. Applications could be filed during a period of one year, and would be 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.

The invitation prescribed the usual conditions applicable to recent rounds. However, the condition that applicants must register a limited company under Thai law with paid up capital of at least Baht 100 million was omitted.

Each application was graded according to the following system:

1. Petroleum exploration program and expenditure and work obligations: 80 points
2. Special advantages, e.g. scholarships, training, contributions to support petroleum development in Thailand, state participation after discovery, etc.: 20 points

Applications and supporting documents must be submitted to the Department of Mineral Fuels. If an applicant did not have adequate equipment, personnel and financial resources to perform the exploration program, a guarantee from an entity which had those resources must also be submitted. Applicants could also propose to provide a bank guarantee.

Detailed descriptions of the exploration blocks, and the geological constant factors and special reductions of each block were set forth in the announcement.

New Procedures in 20th Bid Round

The Minister of Energy issued an announcement dated 23 May 2007 inviting applications for petroleum concessions. Applications may be filed during a period of one year, and will be considered monthly after the 15th day of each month.

The invitation prescribed the usual conditions applicable to recent rounds, with the following changes:

- Qualified foreign companies may be awarded concessions, not just Thai limited companies as in recent rounds.
- Bank guarantees may be proposed as performance security.

Each application will be graded according to the following system:

- Petroleum exploration program and expenditure and work obligations: 80 points
- Special advantages, e.g. scholarships, training, contributions to support petroleum development in Thailand, state participation after discovery, etc.: 20 points

21st Bid Round for Thai Petroleum Concessions

The Ministry of Energy announced on 21 October 2014 the 21st bid round for petroleum concessions. There are 29 exploration blocks located onshore and offshore in the Gulf of Thailand open for bids. See map attached to the announcement, which may be found in the website of the DMF at www.dmf.go.th. The deadline for submission of bids was 18 February 2015, or a new date as may be specified by future public notice.

The announcement set forth rules, procedures and conditions applicable to the bidding process. They include Thailand III terms¹ (adopted in 1990, as amended in subsequent bid rounds) with the following additional features in the 21st bid round:

- 2.1. Applications must include, in addition to application fee of Baht 10,000 cash per block, bid security and documents under 2.3, 2.4 and 2.5 in either Thai or English language.
- 2.2. Bid security is Baht 3,000,000 per block (cashier check, Thai Government bond or Letter of Guarantee) and Letter of Intent to place with the DMF a performance guarantee from a bank with branches in Thailand if the applicant is a successful bidder.
- 2.3. The application form is prescribed in Ministerial Regulation on Rules, Procedures and methods in Concession Application, B.E. 2555 together with documentary evidence listed therein.
- 2.4. The application must include an exploration program in a prescribed format, the amount of expenditure obligations and physical work obligations, and letter of intent to place a performance bond (Thai Government bond or bank guarantee).
- 2.5. The applicant must propose special payments/advantages, in addition to payment of royalty, income tax and SRB, throughout the exploration and production periods. For each exploration block, the special payments/advantages must, as a minimum, include:
 - (1) Scholarships and community development payments; not less than Baht 1 million per year per block during exploration period, and not less than Baht 2 million per year per block throughout the production period.
 - (2) Signature bonus; not less than Baht 10 million per block, except G3/57, G5/57 and G6/57 not less than Baht 100 million per block, and L6/57 and L23/57 not less than Baht 2 million per block.
 - (3) Production bonus; not less than Baht 400 million for each onshore block and not less than 200 million for each offshore block, each time accumulated petroleum sold reaches 10, 20 and 30 million barrels of oil equivalent.
 - (4) After discovery, a right by a Thai company (owned more than 50% by Thai nationals) approved by the Petroleum Committee, to farm in for not less than 5% undivided participating interest, subject to reimbursement of its participating interest share of all expenditure.

Successful bidders must place with the DMF a performance bond in an amount not less than the proposed minimum expenditure obligation of the First Obligation Period (the first three years) 10 working days prior to signing a petroleum concession.

¹ Thailand I is applicable to all offshore concessions granted from 1971 to 1989 and all onshore concessions granted prior to 1982. Thailand II is applicable to all onshore concessions granted from 1982 to 1989. Thailand III has been in effect since 1990, and is applicable to all concessions granted since 1990.

On 27 October 2014, an NGO filed a complaint to the Administrative Court to suspend the 21st bid round. The Administrative Court accepted the case, as Case No. Sor. 55/2557. There were a number of subsequent challenges to the 21st bid round, which was finally cancelled on 26 February 2015, pending enactment of amendments to the PA.

Gas Supply Industry Reform

Currently, PTT Public Company Limited (formerly, the Petroleum Authority of Thailand), with few exceptions, acts as the sole purchaser, transporter and distributor of natural gas in Thailand, through a 3,715 km. pipeline system.

PTT was corporatized (converted from a state enterprise to a public limited company) in October 2001.

Disputed Area (Thailand/Cambodia)

Since 1972, a significant area in the Gulf of Thailand has been off-limits to the petroleum exploration industry due to a dispute over maritime boundaries between Thailand and Cambodia. The area is believed to include commercial fields similar to the Thailand sector of the Gulf of Thailand. Unofficial talks between the governments to find a solution are continuing.

Conclusion

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 prospectivity for oil and gas. It currently imports more than 40% of its natural gas requirements and approximately 70% of its crude oil requirements, and its petroleum reserves are declining with increasing demand.

The 2017 amendments to the PA and the PITA added PSCs and SCs to concessions. It remains uncertain how these new contract regimes will be implemented and administered, and whether the O&G industry will accept their proposed new terms. The PSC cost recovery limit of 50% and the 50% minimum governmental share of the “profit oil” may not be economically viable with current low oil prices, and geological prospectivity.

The Petroleum Act could have simply been amended to allow second and subsequent extensions of existing concessions. There is the practice in most other production jurisdictions, in which subsequent extensions are negotiated and granted, often on improved terms for the host government.

Attachments:

- Annex 1: Outline of Thailand I terms
- Annex 2: Outline of Thailand III terms
- Annex 3: List of Petroleum Legislation

Websites for current information concerning the energy sector:

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| Bank of Thailand (BoT) | www.bot.or.th |
| Board of Investment (BOI) | www.boi.go.th |
| Department of Mineral Fuels (DMF) | www.dmf.go.th |
| Electricity Generating Authority of Thailand (EGAT) | www.egat.or.th |
| Energy Policy and Planning Office (EPPO) | www.eppo.go.th |
| Energy Regulatory Commission (ERC) | www.erc.or.th |
| Ministry of Energy (MoE) | www.energy.go.th |
| Ministry of Finance (MoF) | www.mof.go.th |
| Office of the Council of State | www.krisdika.go.th |
| Petroleum Institute of Thailand (PTIT) | www.ptit.org |
| PTT pcl | www.pttplc.com |
| Revenue Department | www.rd.go.th |
| Securities & Exchange Commission (SEC) | www.sec.or.th |
| Stock Exchange of Thailand (SET) | www.set.or.th |

Annex 1
Outline of Thailand I Terms

Below is a summary of standard terms of a Thailand I petroleum concession:

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| Nature of right: | Concession agreement signed with Ministry of Industry (formerly Ministry of National Development). |
| Management responsibility: | Company, subject to plans approved by Department of Mineral Resources. |
| Area of blocks, onshore: | Ceilings on number and areas of blocks were deleted by PA (No. 6) |
| Duration: | |
| Exploration Period | 8 years + 4-year renewal period. |
| Production Period | 30 years + 10 from end of exploration period. |
| Relinquishment: | 50% after 5 years (35% in deep water) 25% after 8 years (40% in deep water) |
| Financial and fiscal obligations: | |
| 1. Work expenditure | <ul style="list-style-type: none"> • Work and financial obligations are fixed for first 3 years, and second 5 years. |
| 2. Operating costs | <ul style="list-style-type: none"> • Company's responsibility. |
| 3. Bonuses | <ul style="list-style-type: none"> • According to application for concession, referred to as "special benefits". |
| 4. Royalties | <ul style="list-style-type: none"> • Royalty 1/8 or 12.5% in cash (8.75% in deep water), and 1/7 in kind. |
| 5. Income tax | <ul style="list-style-type: none"> • Income tax on profits 50% to 60% (presently 50%); or 35% on profits plus 23.08% remittance tax under 1979 Royal Decree. |
| Capital cost recovery: | Amortized over 5 to 10 years. |
| Operating cost recovery: | Expensed. |
| Pricing: | |
| Crude Oil | <ul style="list-style-type: none"> • No restrictions in law, but royalties and income taxes on exported oil geared to "posted prices", with discounts. |
| Natural gas | <ul style="list-style-type: none"> • Negotiable (§ 58). |
| Disposition of petroleum: | |
| 1. Local market supply | <ul style="list-style-type: none"> • Government may require supply to local market; Special pricing if crude exported exceeds 10 x domestic demand. |
| 2. Exports | <ul style="list-style-type: none"> • Subject to ban or restriction under § 61. |
| Additional cost factors: | <ul style="list-style-type: none"> • Office in Thailand. • "Special benefits" agreed in concession, e.g. scholarships, grants to universities, libraries and lab equipment, etc. • Employment and training of Thai • Approval of employment of aliens. • Equipment becomes property of Thai government. |
| Arbitration: | Zurich, Switzerland, if not otherwise agreed. Rules of International Court of Justice of 6 May 1946. |

Annex 2
Outline of Thailand III Terms

21st bid round, based on Announcement of Ministry of Energy dated 21 October 2014

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|----------------------------------|---|
| Nature of rights | Concession agreement signed with Ministry of Energy since 1 October 2002 (formerly Ministry of Industry). |
| Management responsibility | Company, subject to plans approved by Department of Mineral Fuels (formerly DMR). |
| Eligibility | Concessionaire must be a foreign or Thai limited company. |
| Area of blocks | Ceilings on number and area of blocks were deleted by PA (No. 6). Special concessions not exceeding 200 sq. km., with relaxed royalty rates, may be issued for high-cost onshore fields. |
| Duration | |
| Exploration period | 6 years + 3-year renewal. |
| Production period | 20 years from end of exploration period + 10-year renewal. Commercial field test. Production plans and reports and government approval of amendments to plans required. Obligation to produce within 4 years, with possible deferrals of 2 years each. Government sole risk option: Exercisable after a 12-month negotiation period. If government does not proceed within 2 years, concessionaire may request return of the area. If government proceeds and realizes profits, concessionaire will be reimbursed its costs. Concessionaire may elect to co-venture with government for a period of 3 years. |
| Relinquishments | 50% after 4 years (35% in deep water block). 25% after 6 years (40% in deep water block). |
| Reserved exploration area | 12.5% of initial area, up to 5 years after end of exploration period. |
| Economic obligations | - |
| 1. Application fee | Baht 10,000 cash |
| 2. Bid Security | Baht 3,000,000 per block (cashier check, Thai Government bond or Letter of Guarantee). |
| 3. Work expenditure | Fixed for each of first 3 years, and, later, for each of second 3 years. Excess may be carried forward. Modification possible with consent of Minister. Performance bond in an amount not less than the minimum expenditure obligation of the First Obligation Period (Thai Government bond or bank guarantee). |

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|---|--|--------------------------------------|--------|--|--------|---|---------|---|---------|-------------------------------------|---------|
| <p>4. “Special benefits”</p> | <p>Special payments/advantages, in addition to payment of royalty, income tax and SRB, throughout the exploration and production periods. For each exploration block, the special payments/advantages must, as a minimum, include:</p> <ol style="list-style-type: none"> (1) Scholarships and community development payments; not less than Baht 1 million per year per block during exploration period, and not less than Baht 2 million per year per block throughout the production period. (2) Signature bonus; not less than Baht 10 million per block, except G3/57, G5/57 and G6/57 not less than Baht 100 million per block, and L6/57 and L23/57 not less than Baht 2 million per block. (3) Production bonus; not less than Baht 400 million for each onshore block and not less than 200 million for each offshore block, each time accumulated petroleum sold reaches 10, 20 and 30 million barrels of oil equivalent. (4) After discovery, a right by a Thai company (owned more than 50% by Thai nationals) approved by the Petroleum Committee, to farm in for not less than 5% undivided participating interest, subject to reimbursement of its participating interest share of all expenditure. | | | | | | | | | | |
| <p>5. Royalty</p> | <p>Imposed at progressive rates:</p> <table style="margin-left: 40px;"> <tr> <td>Up to 60,000 barrels per month</td> <td>5.00 %</td> </tr> <tr> <td>60,000 – 150,000 barrels per month</td> <td>6.25 %</td> </tr> <tr> <td>150,000 – 300,000 barrels per month</td> <td>10.00 %</td> </tr> <tr> <td>300,000 – 600,000 barrels per month</td> <td>12.50 %</td> </tr> <tr> <td>over 600,000 barrels per month.....</td> <td>15.00 %</td> </tr> </table> <p>In deep water blocks, royalty is 70% of the above rates. Government has authority to fix lower rates in special situations.</p> <p>Royalty in cash based on posted, realized or market price. Royalty in kind is volume equivalent in value to royalty paid in cash. Payable monthly. Royalty disputes to be settled by court, not international arbitration.</p> | Up to 60,000 barrels per month | 5.00 % | 60,000 – 150,000 barrels per month | 6.25 % | 150,000 – 300,000 barrels per month | 10.00 % | 300,000 – 600,000 barrels per month | 12.50 % | over 600,000 barrels per month..... | 15.00 % |
| Up to 60,000 barrels per month | 5.00 % | | | | | | | | | | |
| 60,000 – 150,000 barrels per month | 6.25 % | | | | | | | | | | |
| 150,000 – 300,000 barrels per month | 10.00 % | | | | | | | | | | |
| 300,000 – 600,000 barrels per month | 12.50 % | | | | | | | | | | |
| over 600,000 barrels per month..... | 15.00 % | | | | | | | | | | |
| <p>6. Income tax</p> | <p>50% on profits (or 35% on profits plus 23.08% remittance tax, under Royal Decree). Payable semi-annually.</p> <p>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.</p> <p>Capital costs are generally amortized over 5 to 10 years (accelerated depreciation permitted).</p> <p>Operating costs, royalties and SRB are expensed.</p> | | | | | | | | | | |

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|-----------------------------------|--|
| | <p>Revenues on crude oil sales based on realized price or, for exports, on the higher of realized or “tax reference” price, the latter being the posted price with a discount.</p> <p>Ten-year loss carry forward, no loss carryback.</p> |
| 7. “Special remuneratory benefit” | <p>SRB is “windfall profits” tax, payable only in years concessionaire has “petroleum profit”. In calculating such petroleum profit for the year, there may be deducted capital expenditure, operating costs, a special reduction (an expense “uplift”) for the year, and petroleum loss carried forward from prior years. SRB is calculated by exploration block at following rates, subject to a ceiling of 75% of petroleum profit:</p> <p><u>Income per meter of well</u> <u>SRB</u></p> <p>Up to Baht 4,800 zero Baht 4,800 to 14,400..... 1 % per each Baht 240 increment Baht 14,400 to 33,600..... 1 % per each Baht 960 increment Over Baht 33,600 1 % per each Baht 3,840 increment</p> <p>To determine “income per meter of well”, first calculate annual petroleum profit and adjust for inflation and exchange rates; then calculate accumulated total meters of all wells drilled during concession period. Income per meter of well equals adjusted annual petroleum profit divided by total depth of all wells + GSF. “GSF” means “geological stability factor”, which is fixed for each geological region and is at least 150,000 meters, higher in difficult drilling areas.</p> |
| Pricing | |
| Crude oil | Export sales on f.o.b. posted price fixed by concessionaire and agreed by government. Domestic sales, in absence of regular exports, on price not exceeding that of imported crude oil; otherwise, on average realized price of exports by all concessionaires. |
| Natural gas | Negotiable, but sole purchase is PTT. |
| Disposition of crude oil | |
| Local market supply | Government may require supply to local market at domestic sales prices. First priority must be given to government at a domestic oil refinery. |
| Exports | May be subject to ban or restriction under PA Section 61. Recently, the MoE issued a letter seeking cooperation from all concessionaires not to export any crude oil. A concessionaire can request approval to export crude oil on a case-by-case basis. |
| Disposition of natural gas | In practice, must be sold to PTT at negotiated price, as it has a <u>de facto</u> monopoly on the internal transportation of natural gas. |
| Additional factors | Office in Thailand. Employment and training of Thai nationals. |

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| | <p>Preference to local goods and services, including ships. Approval of employment of foreign nationals. Equipment becomes property of Thai government at end of production period. Exemption from customs duty and VAT on imports required for petroleum operations. No surface rentals, except for reserved exploration areas. No mandatory government participation unless agreed, otherwise in concession agreement.</p> |
| Governing law | Thai law, taking into account principles of international law. |
| Disputes | Bangkok, unless otherwise agreed. Royalty disputes to be settled by Thai court. Effective 1 August 2012, arbitration according to UNCITRAL Arbitration Rules. Appointing authority to be agreed. |
| Transfers | Qualifications of affiliated company transferees now to be scrutinized. |
| Confidentiality | Confidentiality period for reports submitted by concessionaire ends 1 year after date of receipt. |
| Application to prior concessions | Upon application and consent if concessionaire not yet in production. |

Annex 3
List of Petroleum Legislation

A. PETROLEUM ACT

1. Petroleum Act, B.E. 2514 (1971), 26 March 1971.
2. Petroleum Act (No. 2), 20 November B.E. 2516 (1973) (re PA sections 28, 33, 36, 50 and 84).
3. Petroleum Act (No. 3), 30 April B.E. 2522 (1979) (re PA sections 25, 26, 31, 32, 34 and 76).
4. Petroleum Act (No. 4), 4 August B.E. 2532 (1989) (re PA sections 4, 15, 16, 22, 25, 26, 28, 30, 36, 39, 40, 42 bis, 45, 48, 51, 52 bis, 59, 71, 76, 82, 84, 85, 87, 88, 89, 90, 94, 99 bis and ter, 100, 100 bis- 100 octo, 104 bis, 109 bis and 110 and schedule of fees). [Thailand III terms]
5. Petroleum Act (No. 5), 21 November B.E. 2534 (1991) (re PA section 70).
6. Petroleum Act (No. 6), 17 October B.E. 2550 (2007) (re PA sections 15, 16, 16/1, 17, 18, 22, 22/1, 27, 28, 33, 42, 42bis, 50, 51, 75, 76, 77, 80/1, 80/2, 99bis, 99ter, 104).
7. Petroleum Act (No. 7), 22 June B.E. 2560 (2017) (re PA sections 23, 79, 82, 87 and added “Division 3/1 Production Sharing Contract” (section 53/1-53/8), “Division 3/2 Service Contract” (section 53/9-53/18)).

Related Legislation and Announcements

1. Announcement of the Office of the Prime Minister re straight baseline and internal waters of Thailand, 11 June 1970.
2. NEC 331, re benefits, rights and duties of co-investors with Defence Energy Department, 13 December 1972.
3. Proclamation on demarcation of the continental shelf of Thailand in the Gulf of Thailand, 18 May 1973.
4. Announcement of the Ministry of Industry on concessions for onshore blocks, 14 February 1979.
5. Announcement of the Prime Minister re exclusive economic zone of the Kingdom of Thailand, 23 February 1981.
6. Act on Criminal Offenses on Offshore Platforms, 31 October 1987.
7. Announcement of the Office of the Prime Minister re straight baselines and internal waters of Thailand, Area 4, 17 August 1992.
8. Announcement of the Office of the Prime Minister (No. 2) re straight baselines and internal waters of Thailand, 2 February 1993.
9. Announcement of the Ministry of Energy to submit applications for commissions (19th bid round), 1 July 2005.

10. Announcement of the Ministry of Energy re invitation to submit application for petroleum concessions for exploration blocks onshore, and in the gulf of Thailand (20th bid round), 23 May 2007.

Ministerial Regulations

1. Identification cards, 13 September 1971.
2. (Repealed by No. 14).
3. Concession applications, 13 September 1971. [Repealed in 2012]
4. Form of concession and supplementary concession, 13 September 1971. [Thailand I terms] (Annexed concession forms DMR/P2 and DMR/P3 were replaced in 1989 by those annexed to No. 17). [Repealed in 2012]
5. Rules re operations, 13 September 1971 (amended by No. 12). [Repealed in 2012]
6. Safety areas, 13 September 1971 (amended by No. 11). [Repealed in 2012]
7. Safety measures, 13 September 1971.
8. (Repealed by No. 13).
9. Reserved exploration areas, 13 September 1971.
10. (Repealed by No. 13).
11. Safety areas, 17 April 1981. [Repealed in 2012]
12. Offshore production procedures and platforms, 22 September 1981. [Repealed in 2012]
13. Commerciality criteria and production areas, 30 July 1987.
14. Application and surface reservation fees, 8 December 1989.
15. Special allowances for SRB calculation, 8 December 1989.
16. Expenditure and work obligations in concession applications, 8 December 1989. [Repealed in 2012]
17. Amendment of forms DMR/P2 and DMR/P3 appended to Regulation No. 4, 8 December 1989. [Thailand III terms] [Repealed in 2012]
18. Production plans and forecasts, 6 December 1991.
19. Adjustment of petroleum income for SRB calculation, 6 December 1991.
20. Calculation of petroleum income, capital expenses, regular expenses and those related to several blocks, 21 April 1993.
21. Rules and Procedures for Petroleum Exploration, Production and Preservation B.E. 2555, 29 June 2012.

22. Safety Zone and Signs in the Area where there are Installed Structures and Mechanical Equipment for Petroleum Exploration and Production B.E. 2555, 29 June 2012.
23. Rules, Procedures and Conditions for Application for Petroleum Concession B.E. 2555, 29 June 2012.
24. Form of Petroleum Concession B.E. 2555, 29 June 2012.
25. Plan and Estimated Cost and Security for Decommissioning of Installations Used in Petroleum Industry B.E. 2016, 29 January 2016.
26. Rules, procedures and conditions for requesting and consideration of granting consent for or permitting the use of land in the Land Reform Area, B.E. 2560, 26 December 2017.
27. Remittance of royalty by the production sharing contractor, B.E. 2561, 8 March 2018.
28. Fees for concession, production sharing contract and service contract, B.E. 2561, 8 March 2018.
29. Form of production sharing contract, B.E. 2561, 8 March 2018.
30. Rules, procedures and conditions for applying for and obtaining the right to be a production sharing contractor, B.E. 2561, 8 March 2018.

DMF Notifications and Announcements

1. Rules and procedures on relinquishment of offshore exploration block areas having a water depth not exceeding 200 metres, 20 March 1975.
2. Exploration areas in the Gulf of Thailand, 15 December 1978.
3. Rules and procedures on relinquishment of offshore exploration block areas having a water depth exceeding 200 metres, 4 April 1979.
4. Demarcation of exploration blocks in the Gulf of Thailand and Andaman Sea, 16 May 1980.
5. Place, form and supporting documents for payment of royalty, 4 May 1983.
6. Exploration blocks in Andaman Sea, 2 June 1983.
7. Rules and procedures for the relinquishment of onshore exploration block areas, 1 March 1984.
8. Rules and procedures in the submission of statements of expenditures in conducting operations, 30 April 1992.
9. Forms and filing periods for calculating SRB, 19 March 1993.
10. Rules for using the petroleum data, 23 June 1997.
11. Rules for submission of reports on petroleum operations 4 March 2004.

12. Onshore Petroleum Exploration Blocks, Offshore Petroleum Exploration Blocks in the Gulf of Thailand, 20 April 2007, repealed by Notification dated 11 June 2007.
13. Onshore Petroleum Exploration Blocks and Offshore Petroleum Exploration Blocks in the Gulf of Thailand which are opened for submission of application for Petroleum Concessions, 11 June 2012.
14. Rules and procedures for report of management of safety and environment in petroleum exploration by Seismic method, 13 September 2012.
15. Determining measures for managing wastes from petroleum business operating sites, 28 February 2013.
16. Onshore petroleum exploration blocks and offshore petroleum exploration blocks in the Gulf of Thailand which are opened for submission of application for petroleum exploration rights and productions, 30 September 2014.
17. Rules for abandonment of petroleum wells with radioactive equipment remain in the well, 29 December 2015.
18. Qualifications of Outsider who assesses Petroleum Reserve and Outsider who audits and approves accuracy of estimated expense in decommissioning, 4 October 2016.
19. Rules and procedures for defining areas for conducting petroleum exploration or production in the form of concession, production sharing contract or service contract, 19 October 2017.
20. Determination of exploration blocks in the Gulf of Thailand for application for petroleum exploration and production rights, 5 March 2018.

MOE Announcements

1. Invitation to submit application for the right to petroleum exploration and production in exploration blocks onshore and offshore in the Gulf of Thailand, 21 October 2014.
2. Invitation to submit application for the right to petroleum exploration and production in exploration blocks onshore and offshore in the Gulf of Thailand (supplement), 4 February 2015.
3. Extension of the period for the submission of the application for the right to explore and produce petroleum in the exploration blocks located onshore and offshore in the Gulf of Thailand, 16 February 2015.
4. Cancellation of the announcement on invitation to submit application for the right to petroleum exploration and production in exploration blocks onshore and offshore in the Gulf of Thailand, 26 February 2015.
5. Determination of location and safety zone of offshore petroleum production, 19 January 2017.

Other Materials

1. DMR brochure “Petroleum Exploration Opportunities in Thailand”, which includes an SRB calculation, circa 1990.

B. PETROLEUM INCOME TAX ACT

1. Petroleum Income Tax Act, B.E. 2514 (1971), 26 March 1971.
2. Petroleum Income Tax Act (No. 2) re tax reference prices for deep water exploration blocks, 20 November 1973.
3. Petroleum Income Tax Act (No. 3) re alternative provisions to qualify for U.S. foreign tax credit, 30 December 1979.
4. Petroleum Income Tax Act (No. 4) re income tax and tax returns, 4 August 1989.
5. Petroleum Income Tax Act (No. 5) re specific provisions governing joint development zone, 9 October 1998.
6. Petroleum Income Tax Act (No. 6) re extension of the concession term, 17 October 2007.
7. Petroleum Income Tax Act (No. 7), 22 June B.E. 2560 (2017) (re PA sections 18/1, 24(8), 26(9/1), 26(9/2), 29, 65 undervicies (7), 65 unetvicies, 65(7/1), 65(7/2), “Division 7 quarter Specific Provision Governing Production Sharing Contract” (section 65 vicies bis – 65 vicies sexies) and 72/1).

Related Legislation

1. Revenue Code Amendment Act (No. 29) B.E. 2534 re provisions to qualify for U.S. foreign tax credit, 6 November 1991.
2. NEC Announcement No. 95 re amortization of capital expenses, 29 February 1972. (Amended by Royal Decrees of 28 November 1973 and 22 April 1979)

Royal Decrees

1. Prescribing 50% petroleum income tax rate, 3 September 1971.
2. Prescribing the categories, rates and conditions for deduction of capital allowances, 28 November 1973.
3. Prescribing the categories, rates and conditions for deduction of capital allowances (No. 2), 22 April 1979.
4. Prescribing 35% petroleum income tax rate for certain concessionaires (No. 2), 30 December 1979.
5. Prescribing companies subject to Chapter 7 bis of the Petroleum Income Tax Act, 13 July 1991.

Ministerial Regulations

1. Repealed.
2. Entertainment expenses, 27 December 1971.
3. Assessments and fines, 27 December 1971.
4. Price discounts for deep water blocks, 5 March 1974.
5. Transfers of petroleum business, 14 March 1984.
6. Allocation of income and expenses among blocks, 25 October 1993.

Ministerial Notifications

1. Public charities, clinics and educational institutions, 8 September 1971.
2. Appointment of officers and place for filing of income tax returns, 8 October 2524 (1981). (No English translation)
3. Appointment of officers and place for filing of income tax returns (No. 2), 5 August 2535 (1992). (No English translation)
4. Order of Revenue Department No. Thor. Por. 4/2528, 26 September 1985 re Ordering Payers of Assessable Income under Section 40 of the Revenue Code to Deduct Tax at Source.
5. Appointment of officers and place for filing of income tax returns (No. 4), 29 January 2556 (2013). (No English translation)

N.B. The above list does not include all legislation applicable to concessionaires and petroleum service companies. See, for example, the Foreign Business Operation Act, Civil Aviation Act, Construction Professions Act, Customs Act, Explosives Act, Forestry Legislation, Immigration Act, Working of Aliens Law, Vessels Act, etc.

References of historical interest:

- Notification of the Ministry of Industry prohibiting the export of petroleum, except liquefied natural gas, for 1990, 28 December 1989. (It and similar notifications for the years 1980 through 1989 have expired.)
- Announcement of the Ministry of Industry to submit applications for concessions (13th bid round), 27 July 1990. (1st bid round under Thailand III terms.)
- Announcement of the Ministry of Industry to submit applications for concessions (14th bid round), 12 October 1995.
- Announcement of the Ministry of Industry to submit applications for concessions (15th bid round), 23 February 1996.
- Announcement of the Ministry of Industry to submit applications for concessions (16th bid round), 16 June 1997.
- Announcement of the Ministry of Industry to submit applications for concessions (17th bid round), 27 March 1998.
- Announcement of the Ministry of Industry to submit applications for concessions (18th bid round), 11 July 2000.
- Announcement of the Ministry of Energy to submit applications for concessions (19th bid round), 1 July 2005.
- Announcement of the Ministry of Energy to submit applications for concessions (20th bid round), 23 May 2007.
- Announcement of the Ministry of Energy to submit applications for concessions (21st bid round), 21 October 2014.
- Document No. DMR/P.2/2510 (1967), “Consideration Bases in Applying for Petroleum Exploration and/or Production”.
- PTIT, “Bubbles and Black Gold: Evaluation of the Petroleum Industry in Thailand”, 1993.
- A. T. Chandler, “Evolution of the Thai Petroleum Concession”, unpublished paper, 1988.

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