

Oil and gas regulation in Morocco: overview

by Wacef Bentaibi, Partner, Benoit Pape, Associate, Benjamin Jothy, Associate, Gide Loyrette Nouel

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A Q&A guide to oil and gas regulation in Morocco.

The Q&A gives a high-level overview of the domestic oil and gas sector, rights to oil and gas, health safety and the environment, sale and trade in oil and gas, tax and enforcement of regulation. It covers transfer of rights; transportation by pipeline; environmental impact assessments; decommissioning; waste regulations and proposals for reform.

Domestic sector

1. What is the role of the domestic oil sector in your jurisdiction?

Domestic production

According to data provided by the International Energy Agency, Morocco had a total final consumption of oil products of 11.30 million tonnes of oil equivalent (TOE) in 2016.

However, according to the OECD, Morocco produced only 4,650 TOE of crude oil in 2016 and is therefore almost exclusively dependant on oil imports.

Morocco also produced 553,000 TOE of fuel oil in 2015.

Oil imports/exports market

To compensate its lack of oil production, Morocco imported 2.69 million tonnes of crude oil in 2015. It also imported 1,595 thousand tonnes of fuel oil in 2015.

Domestic market structure

Hydrocarbon deposits belong to the Moroccan state under Article 21 of Law No 21-90 dated 1 April 1992 relating to the exploration and the operation of hydrocarbon deposits (Law No 21-90). Hydrocarbon deposits are inalienable and imprescriptible under Article 4 of the Dahir dated 1 July 1914 on the public domain (Dahir on Public Domain). Therefore, Article 21 of Law No 21-90, read in conjunction with Article 4 of the Dahir on Public Domain, implies that oil resources can only be exploited through a concession contract, as determined by Law No 21-90 (see Question 7).

To date, there are only few concession contracts in place, which relate to a small natural gas production sector.

Government policy objectives

The Moroccan Government currently intends to implement a new regulatory framework specifically for oil shale (see Question 4).

Current market trends

The Moroccan Government has decided to liberalise the price of refined oil products and to gradually withdraw subsidies from the sector (see Question 25).

The gas sector is affected by various governmental policies. The enactment of a new gas code is currently under discussion to regulate and organise gas distribution and the development of gas transport and distribution infrastructure (see Question 29).

2. What is the role of the natural gas sector in your jurisdiction?

Domestic production

Morocco has only marginal gas production. The production of natural gas accounted for 3,097 terajoules (TJ) (on a gross calorific value basis) in 2015.

Natural gas imports/exports

Morocco does not export natural gas.

Morocco imported 44,154 TJ of natural gas in 2015. This may decrease, as a new gas field has been discovered this year in Tendirara.

Domestic market structures

Natural gas qualifies a hydrocarbon under Law No 21-90. Consequently, natural gas deposits belong to the state and can only be exploited through a concession contract (see Question 1 and Question 7).

To date, there are only a few exploitation concessions in place, mainly within the Gharb Basin. The limited local production is distributed among few industrial actors located within the Gharb area.

Almost all of the natural gas consumed in Morocco is currently imported either from the international market or taken out the Maghreb-Europe gas pipeline in lieu of applicable royalties.

Government policy objectives

See Question 29.

Current market trends

See Question 29.

3. Are domestic energy requirements met by oil and gas production?

Oil requirements

Domestic energy requirements are not met by domestic oil production (see Question 1).

Natural gas requirements

Domestic energy requirements are not met by domestic gas production (see Question 2).

4. Are there specific government policies to encourage the exploration and production of unconventional gas or oil?

Oil shale falls out of the scope of Law No 21-90. Oil shale deposits are deemed to constitute a mining resource and are currently regulated under Law No 33-13 on mining activities (Law No 33-13).

However, according to the National Office of Hydrocarbons and Mining (*Office national des Hydrocarbures et des Mines*) (ONHYM)'s website, the Moroccan government acknowledges the strategic importance of oil shale and has decided to develop a specific legal and tax framework for it, which is still currently being prepared by the ONHYM.

Only a few memoranda of understanding (MOUs) in relation to oil shale have been entered into so far between ONHYM and international operators.

Regulation

Regulatory bodies

5. Who regulates the extraction of oil and gas?

Oil

The extraction of oil is regulated by the Ministry of Energy, Mines, Water and Environment (Ministry of Energy) under Decree No 2-14-541 dated 8 August 2014 setting out the responsibilities and the organisation of the Ministry of Energy.

The ONHYM was set up by Law No 33-01 promulgated by the Dahir No 1-03-203 dated 11 November 2003 (Law No 33-01) and implemented by Decree No 2-04-372 dated 29 December 2004 (ONHYM Decree). ONHYM is a Moroccan public body (*établissement public*) with legal personality and financial autonomy. ONHYM acts under the supervision of the Ministry of Energy, which supervises its activities to ensure that they are consistent with the provisions of Law No 21-90 and its implementing Decree No 2-93-786 dated 3 November 1993 (Decree No 2-93-789).

ONHYM's responsibilities include:

- Conducting studies, exploration and reconnaissance for the discovery of hydrocarbon deposits.
- Undertaking the development and operation of hydrocarbon deposits and related activities, including the transport and processing of hydrocarbons.
- The development of the exploration and operation of hydrocarbons, including the conclusion of partnerships with the private sector.

ONHYM can also set up joint-ventures with private operators for the exploration, operation, transport, processing and selling of hydrocarbons, either for itself or on behalf of the Moroccan state.

Under Article 71 of Law No 21-90 and Article 5 of the ONHYM Decree, the ONHYM can, on behalf of the state:

- Enter into petroleum agreements with oil companies (see Question 8).
- Hold participating interests in exploration licences or concessions (see Question 12).
- Exercise pre-emption rights on behalf of the state in case of the assignment of participating interests in a specific oil and gas licence.

The ONHYM's internal department the Oil Agreements Negotiation Division (*Division Négociations des Accords Pétroliers*) attached to the Directorate for Partnership

and Cooperation (*Direction Partenariat et Coopération*) is the key contact for operators carrying out exploration works in Morocco. This department is in charge of the preparation and submission of all applications to be filed with the Ministry of Energy, and generally ensures the daily follow-up of applicable administrative procedures on behalf of its partners in the various licences. Therefore, operators should develop close working relationships with this team to ensure the efficient management of their licence portfolio in Morocco.

The Ministry of Finance is also involved in the monitoring of oil and gas exploration and exploitation activities. Under Article 34 of Law No 21-90 and Article 60 of Decree No 2-93-786, petroleum agreements must be approved by a joint order (*arrêté conjoint*) of the Ministry of Energy and the Ministry of Finance.

Natural gas

The extraction of natural gas is regulated by the Ministry of Energy with the support of the ONHYM (*see above*, Oil). It generally follows the same legal, regulatory and conventional regime as for oil exploration and exploitation.

The regulatory regime

6. What is the regulatory regime for onshore and offshore oil and gas exploration and production?

Exploration

Article 2 of Law No 21-90 distinguishes between:

- **Reconnaissance works (*travaux de reconnaissance*).** Reconnaissance works are geological, geochemical, geophysical and airborne works or surveys to determine the nature of subsoil, with the exclusion of scientific works and production drilling activities
- **Exploration works (*travaux de recherche*).** Exploration works are research operations to discover hydrocarbons in commercial quantities.

Reconnaissance works

An operator must obtain a reconnaissance authorisation (*autorisation de reconnaissance*) to conduct reconnaissance works from the Ministry of Energy (*Article 1, Decree No 2-93-786*).

The Ministry of Energy grants reconnaissance authorisations for a maximum period of one year, renewable every year for a one-year period (*Article 20, Law No 21-90*). Reconnaissance authorisations can only

cover geographical areas that do not overlap with the area of an existing exploration permit or concession. However, they do not, in principle, give exclusive rights to conduct reconnaissance works within a geographical area, and several applicants can obtain reconnaissance authorisations for the same area.

Under Article 21 of Law No 21-90, read in conjunction with Article 5 of Decree No 2-93-786, the data collected during the reconnaissance works must be freely transferred by the holder to the Ministry of Energy.

On completion of the reconnaissance works, the holder can decide to either:

- Abandon the operations.
- Conduct exploration works, following the successful conclusion of a petroleum agreement and the receipt of an exploration permit (*see below*, Exploration works).

Exploration works

Under Article 4 of Law No 21-90, exploration works require:

- A petroleum agreement with the Moroccan state represented by ONHYM, under which the state holds a maximum 20% participating interest in any subsequent exploration permits and concessions.
- An exploration permit issued by the Ministry of Energy subject to the conclusion of the petroleum agreement.

Under Article 32 of Law No 21-90, petroleum agreements must set out the:

- Operating conditions of the exploration activities and subsequent production activities in case of a concession being granted.
- Terms and conditions of the state's interests in the exploration and production activities, including:
 - reference to the area of interest;
 - description of the minimum work obligation of the applicant together with the relevant financial commitments;
 - rules applicable in case of a commercial discovery;
 - repartition of participating interests;
 - conduct of operations;
 - the control methods of the administration;
 - royalties/superficial rent (*loyer superficiaire*);
 - reference to the method of determination of the hydrocarbon price;
 - obligation to supply the internal market;
 - training programmes to be performed by the operator (capacity building);

- dispute resolutions mechanisms allowing for arbitration; and
- provisions on environmental protection.

The standard petroleum agreement differs from the PSC AIPN model used in many other jurisdictions (including within the Maghreb area).

Under Article 22 of Law No 21-90, exploration permits can only be granted to a sole legal entity or in common to several legal entities. It is granted by an administrative act notified to the petitioner and published in the Official Gazette.

The award of an exploration permit is subject to the technical and financial capabilities of the applicants, which must be sufficient to carry out the minimum work obligation defined under the terms and conditions of the petroleum agreement.

Under Article 24 of Law No 21-90, the overall duration of an exploration permit cannot exceed eight consecutive years, which can be extended in exceptional circumstances (see Question 8).

Article 23 of Law No 21-90 expressly provides that exploration permit holders have exclusive exploration rights in relation to hydrocarbons within the area of interest covered by the relevant permit.

In addition, under Article 39 of Law No 21-90 and Article 36 of Decree No 2-93-786, the holder of an exploration permit is subject to a strict duty of disclosure towards the Ministry of Energy including obligations to disclose:

- Any discovery within three days.
- Data, information and so on collected during the exploration programme on a regular basis.

This general obligation of disclosure includes the obligation to communicate all topographical data (*levées topographiques*) to the Ministry of Energy immediately on the completion of operations and (if operations exceed six months) at the end of every six-month period (Article 39, Decree No 2-93-786). During the term of the concession, the Ministry of Energy cannot disclose the data to third parties without the prior consent of the operators.

For drilling works, there is a specific obligation for the holder to inform the Ministry of Energy 15 days in advance of the:

- Location of the drilling.
- Intended purpose of the drilling.
- Known geological structure of the fields to be drilled.

(Article 40, Decree No 2-93-786.)

There is a further general obligation for the holder to inform the Ministry of Energy before any important operation. Specific reports must also be made and kept by the holder, with copies sent to the Ministry of Energy.

Under Article 7 of Decree No 2-93-786, exploration permits are granted by order of the Ministry of Energy within 60 days of the date of filing of the application. They are then notified to the petitioner and published in the Official Gazette.

Production

Oil and gas production requires a concession. Under Article 27 of Law No 21-90, if there is a commercial discovery by a holder of an exploration permit, and the holder has completed their legal and contractual obligations (that is, completion of the minimum work obligation), the holder is entitled to be granted an exploitation concession.

A discovery is regarded as commercial if it consists of a hydrocarbon deposit with recoverable reserves that are sufficient for economically sound development and exploitation activities.

A concession cannot exceed 25 years but can be prolonged for a ten-year period (see Question 8). On expiry, the concession and assets affected by the operation of the concession automatically return to the state without consideration and free from any lien or charge.

Rights to oil and gas

Ownership

7. How are rights to oil and gas held?

Hydrocarbon deposits belong to the state. Consequently, oil and gas rights can only be held through either:

- A reconnaissance authorisation.
- An exploration permit.
- A concession.

The latter two are subject to the conclusion of petroleum agreement with the state, represented by ONHYM (see Question 1, Question 6 and Question 8).

Article 6 of Law No 21-90 defines exploration permits and concessions as temporary real rights that do not grant any rights of ownership over the soil or subsoil.

The holder of a concession is the owner of the available deposits and can freely dispose of recovered deposits

during the term of the concession, but their rights do not extend to ownership of surrounding properties/real estate that belong to the state or private owners.

Rights to oil and gas are shared between the state and the holder of valid concession rights in proportion to their respective participating interests in any applicable concession. As a result, each partner in a licence can freely sell its share of the available reserves.

A concession is awarded by decree. A copy of the decree evidencing the participants rights in a concession is held with a special registry at the Ministry of Energy, which can be consulted by any interested party.

Nature of oil and gas rights

8. What are the key features of the leases, licences or concessions which are issued under the regulatory regime?

Lease/licence/concession term

Reconnaissance authorisation. Under Article 20 of Law No 21-90, reconnaissance authorisations are granted by the Ministry of Energy for a maximum period of one year and can be renewed for additional and multiple periods of one year (see Question 6).

Exploration permit. Under Article 24 of Law No 21-90, the overall duration of an exploration permit cannot exceed eight consecutive years. Sub-periods (usually referred to as an initial period, first extension period and second extension period under the terms of applicable petroleum agreement) are defined in the Ministry of Energy's administrative order awarding the licence.

The entry into each new sub-period of an exploration permit must be accompanied by a relinquishment of the original surface area, every relinquished area becoming free for new exploration works (Article 24, Law No 21-90 and Article 11, Decree No 2-93-786).

Exceptionally, a maximum two-year extension can be granted in case of discovery of a hydrocarbon deposit during the last year of validity of an exploration permit (Article 16, Decree No 2-93-786).

Concession. Under Article 39 of Law No 21-90, the validity period of a concession cannot exceed 25 years. However, an exceptional ten-year extension can be granted where continuation of the operations is economically justified. This is subject to the grant of a specific administrative approval in the form of a Ministry of Energy decree. The exceptional extension request must be filed with the Ministry of Energy at least two years before the expiry of the term of the concession and must include similar information/

documents to the ones initially filed at the time of the original award of the concession (Article 23, Decree No 2-93-786).

The concession can also be subject to an early termination (*déchéance*) if the concessionaire does not comply with its obligations such as:

- The timely completion of development works and start of operations.
- The exploitation of the deposit in accordance with standard industry practices.
- Keeping drill core samples in Morocco.
- Compliance with the concession's terms and conditions.

In these circumstances, Article 31 of Law No 21-90 allows the concession to be re-awarded through a tender procedure in which the initial concessionaire cannot present a bid. The proceeds resulting from the award of the concession to a new operator are distributed to the creditors and successors of the initial concessionaire.

The state can exercise its pre-emption right within a month following the advertising of the tender process.

If the tender process is unsuccessful, the concession is cancelled by a decision of the administration and returned to the state without compensation and free of any charge and encumbrances, together with all assets attached to the concession.

Fees

Reconnaissance authorisation. Fees are determined individually for each authorisation awarded by the Ministry of Energy (Article 20, Law No 21-90).

Exploration permit. The financial obligations are set out individually in the order granting the exploration permit.

Concession. Under Article 34 of Decree No 2-93-786, the holder of a concession must pay a rent of MAD1000 per square kilometre of the area covered by its licence.

The holder of a concession must also pay annual royalties to the state under Article 44 of Law No 21-90 and Article 34 bis of Decree No 2-93-786. The payment of royalties is made by the various holders of participating interests in the concession in proportion to their respective interests.

The royalties are as follows:

- For crude oil:
 - no royalties for the first 300,000 tonnes of production from concessions located onshore or offshore at less than 200 metres depth;

- 10% royalties on production in excess of 300,000 tonnes from concessions located onshore or offshore at less than 200 metres depth;
 - no royalties for the first 500,000 tonnes from production concessions located offshore at more than 200 metres depth;
 - 7% royalties on production in excess of 500,000 tonnes from concessions located offshore at more than 200 metres depth.
- For natural gas:
 - no royalties for the first 300,000 tonnes of production from concessions located onshore or offshore at less than 200 metres depth;
 - 5% royalties on production in excess of 300,000 tonnes from concessions located onshore or offshore at less than 200 metres depth;
 - no royalties for the first 500,000 tonnes of production from concessions located offshore at more than 200 metres depth;
 - 3.5% royalties on production in excess of 500,000 tonnes from concessions located offshore at more than 200 metres depth.
 - The surface area covered by an exploration permit must be between 200 square kilometres and 2,000 square kilometres. Subject to any rights granted before its enactment, Article 25 of Law No 21-90 provides that a single legal entity cannot control (directly or indirectly) a surface area in excess of 10,000 square kilometres onshore or 20,000 square kilometres offshore, except where there is a specific derogation granted by the administration in relation to under-explored areas.

Under Article 27 of Law No 21-90, a concession must be awarded within the original exploration permit area. The awarding of the concession results in the relinquishment of the original exploration permit areas located outside the perimeter of the concession.

Exploration permits and concessions can only be granted to a legal entity (not a natural person) that demonstrates sufficient financial and technical capabilities (see Question 6 and Question 9).

There are also restrictions relating to the location of exploration or production works. Exploration or production works cannot be conducted within specific areas including the vicinity (50 metres) of houses, communication networks, villages, housing groups or public works, except with the express consent of the relevant private owner or administration. More generally, such works cannot be undertaken within protected areas (*aires protégées*).

Liability

The provisions of Law No 21-90 and Decree No 2-93-786 applying to environmental and safety issues are not very developed. Article 35 of Law No 21-90 sets out a general obligation for the holder of a reconnaissance authorisation, exploration permit or concession to repair damages caused to the owners of the relevant lands (for onshore activities) and/or to other companies undertaking exploration or production works in the vicinity of the holder's activities.

Article 38 of Law No 21-90 sets out a general obligation to comply with applicable environmental regulations. Therefore, the general rules applicable to the protection of the environment under Moroccan law must be considered in addition to the basic principles set out under Law No 21-90. Under Article 63 of Law No 11-03, any person or legal entity transporting or using hydrocarbons or noxious products or exploiting a classified installation (such as an oil and gas plant or storage facilities) is responsible, even without fault, for any material damage or injury directly or indirectly linked with these activities.

Restrictions

Geographical restrictions include that:

- Reconnaissance authorisations can only be granted for areas not already covered by an exploration permit or a concession.
- The name and address of the applicant's agent or representative in Morocco.

9. How are such leases, licences or concessions awarded?

Reconnaissance authorisation

A reconnaissance authorisation application must be accompanied by documents establishing the technical and financial capabilities of the applicant, including:

- The name, articles of association and location of the headquarters of the applicant.
- The names of the president and of the board members if the applicant is registered as a joint stock company.
- The names of the managers and of the board members if the applicant is registered as a limited partnership or limited liability company.
- The names of all the partners if the applicant is registered as a partnership or as limited liability company without supervisory board.
- All known information if the applicant is a company being formed.
- The name and address of the applicant's agent or representative in Morocco.

- The reconnaissance authorisations or exploration permits held by the applicant.
- The geographical coordinates and a topographic map of the reconnaissance area.
- A general standard-setting programme of works to be executed and the minimum financial investment by the applicant for the completion of the works.

(Article 2, Decree No 2-93-786.)

Exploration permit

Under Law No 21-90, the award of an exploration permit is subject to the applicant's demonstration of the appropriate financial and technical capabilities. The Law sets out a list of items to be produced by the applicants as evidence of their technical and financial abilities, and identifies all required corporate information.

The list is similar as for the grant of a reconnaissance authorisation (see above, Reconnaissance authorisation).

The award of an exploration permit can also be subject to the setting up of a financial guarantee (in the form of a bank guarantee) to be issued by the applicant in favour of ONHYM to guarantee the proper performance of the contemplated minimum work programme.

Concession

Under Article 22 of Decree No 2-93-786, an application for a concession must be filed with the Ministry of Energy no later than three months before the expiry of the current validity period of the exploration permit from which it derives. The application is registered on a specific registry held by the Ministry of Energy. A receipt for the application is then remitted to the applicant and a notice is published in the press for five consecutive days within 30 days of the filing.

Article 23 of Decree No 2-93-786 specifies a list of documents to be provided by the applicants, which includes:

- A map describing the limits and coordinates of the requested concession together with the indication of any works already performed and the location of any wells drilled by the applicant.
- A technical report describing the nature of the works performed, including studies demonstrating the importance of the hydrocarbon deposit.
- A development programme for the applicant to carry out, together with a detailed schedule indicating a contemplated start date for commercial operations.
- An economic and commercial study relating to the exploitation of the deposit.

The award of the concession is then executed by a decree implementing the Ministry of Energy proposal.

The decree is notified to the applicant, published in the Official Gazette and registered on a specific register held by the Ministry of Energy.

Transfer of rights

10. How are oil and gas rights transferred?

Transfer of rights

Under Article 8 of Law No 21-90, participating interests held by an operator in an exploration permit or in a concession can be transferred if:

- The transferred interests apply to the totality of the area of interest covered by the applicable exploration permit.
- It receives prior approval from the Ministry of Energy.

The approval is granted by the Ministry of Energy in the form of an order (*arrêté*) authorising the assignment (Article 19, Decree No 2-93-786). In a transfer of participating interests, the assignee must assume all the obligations initially undertaken by the assignor. If the assignment is made in favour of a third party (that is, not an affiliate of the assignor), the state is always entitled to exercise a pre-emption right.

Reconnaissance rights are not transferrable.

Restrictions on transfer

See above, Transfer of rights.

Tax

11. What payments are payable by oil and gas interest holders to the government?

Oil and gas companies are subject to the Moroccan Tax Code (MTC) in the same way as other companies. Although Law No 21-90 provides for tax provisions and incentives, since 2007 Article 248-IV of the MTC provides that all tax provisions deriving from separate pieces of legislation (including Law No 21-90) are no longer applicable. However, the MTC provides broadly the same incentives as those initially provided for under Law No 21-90. These incentives include:

- A total exemption from corporate income tax applicable to the holder or each of the joint holders of an exploitation concession for ten consecutive years from the commencement date of regular production from the exploitation concession.
- Profits and dividends distributed by an exploitation permit holder to its shareholders are exempted from withholding tax.

- A VAT exemption applies to goods and services acquired in the domestic market or imported from abroad that are necessary for the activities of reconnaissance authorisation, exploration permit and concession holders, as well as their contractors and sub-contractors.

Law No 47-06 relating to local taxes sets out exemptions from permanent business tax (*taxe professionnelle*) and undeveloped urban areas tax (*taxe sur les terrain urbains non bâtis*) for oil and gas activities.

12. Does the government derive any other economic benefits from oil and gas exploration and production?

The state, through ONHYM, holds participating interests (limited to 25%) under the relevant petroleum agreement and related exploration permits and concessions (*Article 4, Law No 21-90*). It therefore benefits from the proceeds of any oil and gas exploitation activity.

The state also benefits from the development of any exploration and exploitation activity through the levy of applicable taxes and royalties (*see Question 13*).

13. What taxes and duties apply on import and export of oil and gas?

The local VAT rate of 10% (with the right to deduct) applies to petroleum gas and other gaseous hydrocarbons as well as oil petroleum or shale products (either crude or refined). However, this rate does not apply to lubricants and oil or distillation sub-products, which are subject to the standard VAT rate of 20%.

The export of oil and gas is VAT exempted under Moroccan VAT territoriality rules.

The local VAT rules also apply to oil and gas imports. Oil and gas imports are also subject to the following import duties:

- Crude oil: exempt from import duty and interior tax on consumption, but subject to a parafiscal tax of 0.25%.
- Refined energetic products: subject to import duties, interior tax on consumption and parafiscal tax.

Transportation by pipeline

14. What regulatory requirements apply to the construction and operation of oil and gas pipelines?

Oil pipelines

Under Articles 1 and 2 of the Dahir implementing Law No 1-72-255 dated 21 March 1973 on the importation, exportation, refinery, recovery and distribution of hydrocarbons (Law No 1-72-255), the distribution through pipelines of oil and gas and the building of pipelines are subject to administrative authorisation by the Ministry of Energy.

Article 51.1 of Decree No 2-93-786 also provides that the holder of a concession can build the pipelines needed for the exploitation of the concession either inside or outside of its concession at its own expense and risk.

Article 58 of Decree No 2-93-786 requires hydrocarbon pipelines to be installed and operated according to the state of the art and the safety rules.

The operator must ensure all precautionary measures to avoid the risks of:

- Polluting neighbouring bodies of water.
- Hydrocarbons leaks.
- Fire and explosion hazards.

The development of pipelines and/or infrastructure necessary for the transport and distribution of oil is also subject to general statutory obligations in relation to the environment, rights of way and urban development.

Gas pipelines

See above, Oil pipelines.

15. Is there a system of third party access to pipelines and other infrastructure?

Under Article 51.2 of Decree No 2-93-786, third parties can access existing pipelines and other infrastructure on the request of the Ministry of Energy, with the conditions that:

- The holder is not obliged to build or maintain infrastructure exceeding its own requirements.
- The specific needs of the holder have priority over the needs of third parties.
- The use by third parties must not impede the use of the installation by the holder for its own needs.
- The third parties must provide the holder with fair compensation determined by mutual agreement. The compensation must cover the actual expenses of the holder, including a share of its normal amortisation and maintenance costs plus a margin of 15%. However, if the state uses the installation, the holder is only entitled to compensation covering its overhead costs.

Health, safety and the environment

Health and safety

16. What is the health and safety regime for oil and gas exploration and extraction, and transportation by pipeline?

Exploration

Under Article 32 of Decree No 2-93-786, the holder of a reconnaissance authorisation, exploration permit or concession must:

- Respect the hygiene and health and safety requirements of its employees and neighbouring inhabitants.
- Minimise social and ecological burdens.
- Avoid injury or damage to public or private properties.

In particular, the holder must take precautions to ensure the protection of:

- Vehicular traffic and shipping navigation.
- Aquatic resources and the prevention of pollution of seas, lakes, beaches, rivers and groundwater.
- Forests, farmlands and plantations.

The holder must also take out insurance against any damage caused to the environment.

Under Article 33 of Decree No 2-93-786, the holder of a reconnaissance authorisation, exploration permit or concession must:

- Inform the Ministry of Energy and the local authorities of any serious accident.
- Have a sufficient supply of medicine and other indispensable rescue materials at the location of the works.

Extraction

See above, Exploration.

Transportation

See above, Exploration.

Environmental impact assessments (EIAs)

17. Is an EIA required before extracting or processing onshore or offshore oil and gas?

Law No 12-03 on environmental impact assessment promulgated by the Dahir No 1-03-60 dated 12 May 2003 (Law No 12-03) has implemented an EIA process in Morocco.

Under Article 2 of Law No 12-03, any project undertaken by legal or physical persons that, due to their nature, dimension or location could imply adverse effects for the biophysical and social environment, are subject to an EIA. The exploration and production of oil and gas is therefore subject to an EIA.

18. What are the different stages of the EIA?

Under Article 6 of Law No 12-03, the EIA must include:

- A description of the initial condition of site to be affected by the project, including in particular its biological, physical and human features.
- A description of the prominent components, features and steps of the project, including the contemplated:
 - production processes;
 - use of raw materials and energy resources;
 - liquid, gaseous and solid emissions, releases and disposals; and
 - waste generated by the project.
- An evaluation of the positive and adverse effects of the project on the biophysical and social environment.
- Proposed measures to mitigate adverse effects on the environment.
- A monitoring programme.
- A summary of the legal and regulatory framework applicable to the project.
- A summary of the assessment.

A project subject to an EIA must receive prior approval from the relevant regional and/or national environmental assessments committees in charge of delivering a prior decision on environmental acceptability (*decision d'acceptabilité environnementale*). This approval process usually lasts about three to four months.

Environmental permits

19. Is there a permit regime for environmental damage or emissions produced during the extraction or processing of oil and gas?

Morocco has signed and ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change. However, as a developing country, Morocco is

not bound to reduce its greenhouse gas emissions and did not implement an emission trading scheme that would apply to polluting industries.

Nonetheless, the Moroccan legislator has adopted a dedicated statute to prevent atmospheric pollution. Law No 13-03 on atmospheric pollution control (Law No 13-03) implements limits on the emission and release into the air of pollutants such as toxic or corrosive gas, smoke, steam, heat, dust or smells.

Environmental concerns

20. Are there any specific government policies and/or incentives aimed at meeting the environmental concerns associated with the exploration and production of oil and gas?

The general environmental protection regulations apply to the exploration and production of oil and gas. Oil and gas exploration and production facilities are regulated by the Dahir of 25 August 1914 on establishments classified as unhealthy, unpleasant or dangerous. A prior authorisation granted by the Regional Wali (Governor) on the basis of advice given by the municipal/local authorities is therefore required to open and operate this type of facility. In addition, Law No 11-03 relating to the protection and enhancement of the environment (Law No 11-03) sets out basic rules and general national policy principles for the protection and development of the environment.

Any person owning or operating a classified establishment must take all necessary measures to prevent and fight against pollution and degradation of the environment, in accordance with the environmental laws, regulations, norms and standards in force. If an inspection highlights environmental risks, the Governor of the region where the plant is located can, after requesting the company to correct the situation (if the risk is not imminent and does not require immediate action), suspend in whole or in part the activities of the classified establishment responsible for this risk until a decision is made by a tribunal. The tribunal can prohibit any activity until the completion of any works and upgrades necessary to correct the situation. It can also order that the improvement works be performed in collaboration with the Moroccan authorities at the company's expense.

Waste

21. What are the regulations on the disposal of waste products resulting from oil or gas extraction or processing?

Article 3 of Law No 28-00 on management and elimination of waste (Law No 28-00) read in conjunction with the provisions of Decree No 2-07-253 dated 7 July 2008 on waste classification indicates that wastes, and in particular mud, resulting from hydrocarbon drilling activities are classified as hazardous waste.

Consequently, the disposal of such hazardous wastes is highly regulated. Under Articles 29 et seq of Law No 28-00:

- Hazardous wastes must be treated in duly authorised facilities.
- The collection and transport of hazardous wastes can only be undertaken by proven professionals with administrative authorisation.
- The transport of hazardous wastes can only be performed if the waste containers are adequately labelled.
- The transport of hazardous wastes must be subject to a tracking system.
- Any physical and legal person that processes or gives wastes to an unauthorised person is jointly liable for any injury caused by those wastes.
- Waste producers must hold a register available to the Ministry of Energy indicating the quantity, type, nature and origin of hazardous waste.

Flares and vents

22. Are flare and vent regulations in place?

Morocco has not implemented specific flare and vent regulations. However, atmospheric pollution is regulated by Law No 13-03 (see Question 19).

Decommissioning

23. What are the decommissioning obligations and liabilities that arise?

Law No 21-90 and Decree No 2-93-786 do not contain specific decommissioning obligations. However, under Article 70 of Law No 11-03, the Ministry of Energy can require any operator conducting operations with adverse effects on the environment to remediate the environment. If so, the Ministry of Energy can implement a remediation plan to be fulfilled by the operator. If the operator does not respect its obligations in the remediation plan, the Ministry of Energy can conduct an appropriate operation at the expense of the operator (*Articles 71 and 72, Law No 11-03*).

In practice, decommissioning obligations are now imposed on the signatories of petroleum agreements

(and consecutive holders of exploration permits or concessions) to address standard post-operations concerns such as the re-plugging of wells, site rehabilitation and so on.

Sale and trade

24. How is trade in oil and gas usually completed?

Gas

Distribution to consumers in the gas sector is carried out only in the form of bulk and packaged sales of gas cylinders or gas tanks for private individuals and professionals.

Oil

In the past, the state regulated the market and indirectly ensured the quality control of refined hydrocarbons as the main shareholder in companies in the downstream oil sector (SAMIR, SCP).

Currently, the refining, import and distribution of these products are completely carried out by private operators. Oil is traded freely either on the stock market or through agreements and direct contracts. The imported products are then distributed to consumers through service stations.

25. Are oil and gas prices regulated?

Law No 104-12 on freedom of prices and competition, promulgated by Dahir No 1-14-116 of 2 Ramadan 1435 (7 August 2014) (Law No 104-12), established a general principle that the prices of goods, products and services are determined by free competition. However, this principle does not apply to certain specific goods, products and services determined by the administration after consultation with the Competition Council.

Gas price

The Order of the Minister Delegate to the Head of Government in charge of General Affairs and Governance No 1899-15 of 13 Shaaban 1436 (Order 1899-15) sets out a list of goods, products and services whose prices are regulated. The list includes butane gas. The list was subsequently supplemented by the Order of the Minister Delegate to the Head of Government in charge of General Affairs and Governance No 1640-16 of 19 Shaaban 1437 (26 May 2016), and the Order of the Minister Delegate to the Head of Government, in charge of General Affairs and Governance No 217-18 of 6 Jumada I 1439.

The Order of the Minister Delegate to the Head of Government in charge of General Affairs and Governance

No 1242-16 of 17 rejev 1437 (Order 1242-16) specifies rules for setting prices for the takeover and sale of butane gas. Order 1242-16 was subsequently supplemented and amended by Order of the Minister Delegate to the Head of Government, in charge of General Affairs and Governance No 1053-17 of 21 Shaaban 1438.

The take-back price of butane gas is fixed on the first of each month on the basis of its indexation to international quotations for this product, in accordance with the elements of the structure of the take-back price specified in Annex No 1 attached to Order 1242-16.

Article 2 of Order 1242-16 currently specifies that the maximum basic selling price to the public of butane gas is MAD3333.33 per tonne.

Oil price

The Order of the Minister Delegate to the Head of Government in charge of Economic and General Affairs No 3086-14 of 16 Rabi I 1436 (29 December 2014) previously included liquid and gaseous fuels on the list of goods whose price was fixed by regulation. This order was repealed and replaced by Order 1899-15, which no longer includes those goods.

The Moroccan government liberalised oil prices through the Agreement on the Approval of Petroleum Product Prices between the Moroccan Government and the Petroleum Products Sector signed on 26 December 2014, and oil prices are no longer fixed by regulation.

However, oil prices are approved by a specialised commission chaired by the Ministry of General Affairs and Governance and composed of representatives of the:

- Ministry of the Interior.
- Ministry of Economy and Finance.
- Ministry of Energy.
- *Groupement des Pétroliers du Maroc*.
- *Société Anonyme Marocaine de l'Industrie de Raffinage*.

The Order of the Minister Delegate to the Head of Government in charge of General Affairs and Governance No 4554-14 of 6 Rabi I 1436 (1 January 2015) (Order 4554-14) sets the prices for the takeover of refineries and the sale of liquid fuels as follows:

- The maximum take-back prices for liquid fuels are set on the 1st and 16th of each month in accordance with the elements of the take-back price structure specified in Annex 1 to Order 4554-14.
- The maximum basic retail selling prices of liquid fuels are calculated on the 1st and 16th of each month, on the basis of the take-back prices provided for in Article 1 above and in accordance with the elements of the sales price structure set out in Annex 2 to Order 4554-14.

- The price structure is brought to the attention of the various parties by the Ministry of Energy.
- The maximum basic selling prices to the public for liquid fuels is made public.

Enforcement of regulation

26. What are the regulator's enforcement powers?

Under Articles 39 and 40 of Law No 21-90, administrative sanctions can be imposed on the holders of exploration permits or concessions, as their titles can be revoked by the Ministry of Energy if they do not comply with their obligations.

Under Article 68 of Law No 21-90, any violations of the provisions of Law No 21-90 and Decree No 2-93-786 trigger liabilities and penalties. In addition, any person or legal entity subject to these liabilities and penalties can have its title revoked under Articles 39 and 40 of Law No 21-90, and be prevented from obtaining an exploration permit or a concession contract for a maximum five-year period.

Under Article 69 of Law No 21-90, any works conducted in violation of Law No 21-90 and Decree No 2-93-786 must be suspended.

27. Is there a right of appeal against the regulator's decisions?

The Ministry of Energy's decisions are usually in the form of an administrative act and can therefore be challenged before the administrative courts.

Insurance

28. Are there any insurance requirements that must be met?

Under Article 32 of Decree No 2-93-786, the holder of a reconnaissance authorisation, exploration permit or concession must take out insurance against any damage caused to the environment.

Under Article 36 of Law No 28-00, any legal or physical person that produces, collects, transports, stores or processes hazardous wastes must have an insurance contract covering their professional liability.

Under section 162 of the Insurance Code (promulgated by Dahir No 1-02-238 of 3 October 2002 (promulgated by Law No 17-99)), insurance policies covering risks located in Morocco must be taken out with Moroccan licensed insurance companies.

Reform

29. Are there plans for changes to the legal and regulatory framework?

Morocco is currently dependent on imports (notably from Algeria) for its supply of gas. To diversify its sources of supply, the government is contemplating a major gas-to-power programme in Jorf Lasfar, where the government would control the entire chain of production including import, regasification, storage, transport and distribution.

Bill No 94-17 is currently under discussion. Once this is passed, the regulatory framework will likely see the following changes:

- All activities from the import to the distribution of gas will be considered to be public services operated through concessions granted by the state after requests for tender.
- A private company will have a monopoly over the entire territory to transport gas. The state will take interests in the shareholding of this company.
- The distribution of gas will be a monopoly divided in various consumption zones delimited in a concession contract.
- The price of gas to the final consumer (other than the National Office for Electricity and Potable Water (*Office National de l'Eau Potable et de l'Electricité*) (ONEE)) will be regulated on the basis of average gas prices from three sources of supply:
 - LNG imports;
 - pipeline imports; and
 - local gas production.
- The regulation of the gas sector will be ensured by an independent authority. Law No 48-15 on the regulation of the electricity will be amended and the regulation of the gas sector transferred to the ONEE, which will be renamed as the National Energy Regulatory Authority.

The regulatory authorities

Ministry of Energy, Mines, Water and Environment (*Ministère de l'Énergie, des Mines et du Développement Durable*)

W www.mem.gov.ma

Main responsibilities. The Ministry of Energy is in charge of the regulation of the oil and gas sectors in Morocco.

Online resources

Artemis

W www.artemis.ma

Description. Private database with up-to-date legislation and precedents in Morocco.

Contributor profiles

Wacef Bentaibi, Partner

Gide Loyrette Nouel

T +212 5 2248 9032

F +212 5 2248 9001

E wacef.bentaibi@gide.com

W www.gide.com

Professional qualifications. *Avocat à la Cour*

Areas of practice. Projects (energy and infrastructure) with a focus in the energy sector (power, gas, oil, mining, renewables); public law; regulatory.

Recent transactions.

- Assisting a Canadian mining company in the development of mining activities in Morocco.
- Advising multiple IOCs in the context of their oil and gas exploration and exploitation activities in Morocco and in the wider MENA region.
- Assisting an IOC in the analysis and comment on a draft law regulating the midstream and downstream gas sector in Morocco.
- Advising a leading South Korean industrial group for the set-up a new manufacturing plant in Tangiers (Kingdom of Morocco) and negotiation and applicable Investment Conventions with the State.
- Advising a French consortium in relation to the PPP for the design, financing, development, operation and maintenance of a desalination plant and a wind farm in Morocco.
- Advising the ONEE in relation to electricity/water distribution regulatory issues.

- Advising multiple private operators in the context of the development of renewable energy projects (solar, biomass, wind) in Morocco.
- Advising the Kingdom of Morocco in relation to the preparation of the new Moroccan mining code.

Languages. French, English, Arabic.

Professional associations/memberships.

Member of the Paris Bar Association since 2005.

Publications.

- *Training seminars on energy law at the International Chamber of Commerce (ICC) Morocco since 2013.*
- *Author of a press article "A long wait: The new mining code should bring about big changes" Oxford Business Group - The report Morocco 2013.*

Benoit Pape, Associate

Gide Loyrette Nouel

T +212 5 22 48 90 28

F +212 5 2248 9001

E benoit.pape@gide.com

W www.gide.com

Professional qualifications. *Avocat à la Cour*

Areas of practice. Projects (energy and infrastructure) with a focus in the energy sector (power, gas, oil, mining, renewables); public law; regulatory.

Recent transactions.

- Advising a French consortium in the preparation of its bid in relation to the PPP for the design, financing, development, operation and maintenance of a desalination plant in Morocco.
- Advising private operators in the context of the development of renewable energy projects (solar, biomass, wind) in Morocco.
- Advising the ONEE in relation to electricity/water distribution regulatory issues.
- Advising oil & gas operators in the context in relation to its upstream oil and gas activities in Morocco.

- Advising an investor in the context of the acquisition of the energy activities of a Moroccan company.
- Advising an institutional player in the port industry with respect to issues in relation to the implementation of authorisations and port concessions.

Languages. French, English.

Professional associations/memberships.

Member of the Paris Bar Association since 2016.

Benjamin Jothy, Associate

Gide Loyrette Nouel

T +33 1 40 75 60 45

F +33 1 40 75 37 38

E benjamin.jothy@gide.com

W www.gide.com

Professional qualifications. *Avocat à la Cour*

Areas of practice. Energy law (power, gas, oil, mining, nuclear, renewables); public law; regulatory.

Non-professional qualifications. MA in International Business, Warsaw School of Economics.

Recent transactions.

- Advising a French consortium in the preparation of its bid in relation to the PPP for the design,

financing, development, operation and maintenance of a desalination plant in Morocco.

- Advising a Moroccan public entity on the regulatory framework applicable to the port sector.
- Advising a hydrocarbon infrastructure manager on the sale of a pipeline in France. Audit of various electricity and gas supply contracts.
- Assisting 130 distribution network operators with the group purchase of smart metres.
- Assisting a European investment fund on the acquisition of a French company involved in the generation of hydroelectric power. Audit of the regulatory aspects.
- Advising a gas distribution system operator on the renewal of a concession agreement. Analysis of the issues raised by the scope of this new agreement.

Languages. French, English.

Professional associations/memberships.

France Energie Eolienne (FEE); *Syndicat des énergies renouvelables* (SER); *France Hydro Electricité*; *Office franco-allemand pour les énergies renouvelables*; *Association Française de droit de l'énergie* (AFDEN).

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