

Regulation of Upstream Oil & Gas

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Overview

- The UAE is among the world's ten largest oil producers and is a member of the Organization of the Petroleum Exporting Countries, the Organization of Arab Petroleum Exporting Countries and the Gas Exporting Countries Forum.
- Around 95% of the UAE's oil reserves are located in Abu Dhabi and each of the seven individual Emirates that constitute the UAE are responsible for the regulation of the sector within their own territory. In addition to oil, individual Emirates within the UAE have provided concessions for the extraction of natural gas, and the UAE plans to boost this domestic natural gas production to help meet growing internal demand.
- This Practice Note provides an overview of the legal framework for the UAE's upstream, i.e., the exploration and production of oil and gas, sector (both onshore and offshore).

Definitions

- *ADCO*: Abu Dhabi Company for Onshore Petroleum Operations.
- *ADMA-OPCO*: Abu Dhabi Marine Operating Company.
- *ADNOC*: Abu Dhabi National Oil Company.
- *IOC*: International Oil Company.
- *UAE*: The United Arab Emirates.

Practical Guidance

Legal and regulatory framework

Constitution

Pursuant to article 23 of the UAE Constitution, the natural resources in each Emirate are the public property of that Emirate. The federal Ministry of Energy develops general policy but there are no unified federal oil and gas laws and each Emirate has autonomy to determine its own regulatory framework.

Supreme Council

Abu Dhabi, Dubai and Sharjah each have a Supreme Council with authority over the petroleum sector in their respective Emirates.

Abu Dhabi's Supreme Petroleum Council creates and administers policy and regulations and sets the fiscal framework for the industry. The Supreme Petroleum Council also performs all functions of ADNOC's Board and ADNOC participates in concessions on behalf of the Government of Abu Dhabi. The Supreme Petroleum Council is chaired by the ruler of Abu Dhabi and comprises nine other members including the UAE's Minister of Energy and the ADNOC CEO.

Sharjah's Supreme Petroleum Council creates and administers petroleum policy in the Emirate of Sharjah. The Sharjah National Oil Company (SNOC) participates in concessions on behalf of the Sharjah Government and is the owner and operator of the Sajaa assets, which were first granted by concession to Amoco Oil Company in 1978.

Dubai's Supreme Council of Energy is tasked with delivering primary energy resources, setting tariffs and managing environmental impact in the Emirate of Dubai. The Department of Oil Affairs issues licenses to conduct oil-related activities. Wholly government-owned Dubai Petroleum Establishment is the entity responsible for managing Dubai's offshore petroleum assets and in 2007 took over ConocoPhillips' concession, which included the giant Fateh field.

Local laws

The respective Emirates do not have comprehensive oil and gas legislation in place and the relevant law is instead established through various applicable laws and decrees. In the case of Abu Dhabi, these include:

Law	Function
Abu Dhabi Decree No. 1/1965 Abu Dhabi Income Tax Decree 1965	All companies carrying on trade or business in Abu Dhabi are required to pay taxes on their earnings at rates established on a sliding scale up to a maximum of 55%. In practice, however, only oil and gas producing companies pay taxes at rates specified in the relevant concession agreement together with royalties on production.
Abu Dhabi Law No. 7/1971 On the Incorporation of the Abu Dhabi National Oil Company (ADNOC)	Established ADNOC.
Abu Dhabi Law No. 12/1973 On Petroleum Ports in Abu Dhabi*	Concerns the protection of the marine environment and navigation of vessels in petroleum ports.

Abu Dhabi Law No. 4/1976 On Abu Dhabi Emirate Ownership for the Gas	Vests ownership of gas in the Emirate and grants ADNOC the right to exploit and use all such gas either solely or through joint agreements or projects concluded with third parties, provided ADNOC's participation is at least 51%.
Abu Dhabi Law No. 8/1978 on the Preservation of Oil Resources in Abu Dhabi	The principal legislation governing upstream operations including consent procedures for exploration activity and facility construction and provisions setting standards and reporting obligations relating to drilling and abandonment.
Abu Dhabi Law No. 1/1988 on the Establishment of the High Council for Petroleum in Abu Dhabi	Established the Supreme Petroleum Council.
Abu Dhabi Law No. 24/1999	Protection and Development of the Environment Law - sets various environmental standards, permitting procedures and penalties.
Federal Law No. 24/1999 on the Protection and Development of the Environment	Sets various environmental standards, permitting procedures and penalties that apply across the UAE.

Treaties

In terms of investment protection for foreign investors in the upstream sector:

- the UAE is a signatory to the New York Convention on the recognition of foreign arbitral awards, although there have only been limited instances where the convention has successfully been relied upon to enforce awards in the UAE. In practice, government-owned entities require agreements to which they are party where performance is within an Emirate to be governed by the law of that Emirate with disputes subject to local arbitration; and
- the UAE has numerous bilateral investment treaties in place, including with the home nations of most of its major industry investors.

From an environmental management perspective, the UAE has also ratified a number of environmental treaties, including the Basel Convention on Hazardous Waste.

Licensing procedure and concession structures

Oil

Crude oil concessions are granted by the relevant Supreme Council on behalf of the Emirate.

There are no “model form” concession agreements used in the UAE. In Abu Dhabi, rights to explore for and produce oil and gas are typically granted through concessions to ADNOC and selected international partners (either directly to the concession holders who will be bound by a joint venture agreement or to jointly owned project companies). ADNOC retains at least a 60% interest in each concession. ADNOC and its partners typically appoint an operating company to operate the concession on their behalf on a non-profit basis.

Abu Dhabi's major concessions are the ADNOC Onshore (formerly ADCO) and ADNOC Offshore (formerly ADMA-OPCO) concessions:

- The original ADNOC Onshore concession agreement was granted in 1939 and eventually expired in 2014 after 75 years. ADCO was incorporated in 1978 as the company responsible for operations in the concession area. In 2015, a new 40-year concession agreement for the area, which will continue to be operated by ADCO, was signed. ADCO's ownership is now split between ADNOC (60%), Total (10%), JODCO (5%), Korea GS E&P (3%), BP (10%), CNPC (8%) and CEFC (4%).
- The original ADNOC Offshore concession was due to expire in March 2018. ADNOC has since split the concession into multiple areas with new terms to unlock greater value and increase opportunities for partnerships. For example, in January of 2019, ADNOC granted Italy's multinational energy company, Eni, and Thailand's PTT Exploration and Production Public Company Limited (PTTEP) a 100% stake in the explorative phase of two offshore blocks. Upon successful exploration, ENI and PTTEP will have the opportunity to develop and produce any discoveries, with ADNOC retaining a 60% stake in the production phase.

Gas

Abu Dhabi Law No. 4/1976 vests ownership of gas located within Abu Dhabi to the Emirate of Abu Dhabi and grants ADNOC the right to “exploit and use” such gas alone or in partnership with others, provided that it maintains an interest of at least 51%. Foreign investment in producing gas resources occurs via field entry agreements with ADNOC which pays the joint venture a fee for gas produced. Under Abu Dhabi Law No. 4/1976, oil companies may retain and use gas they produce as part of their own operations on payment of a fee to ADNOC. The remaining gas is then required to be delivered to ADNOC. In practice this gas is delivered to ADNOC Gas Processing (formerly GASCO).

Key issues: company establishment, liabilities, transfer of rights, security and decommissioning

Company establishment

Foreign entities (unless incorporated in other GCC states) doing business in the UAE are required to either:

- establish (and register with the federal Ministry of Economy) a branch or representative office with a UAE national (or company wholly owned by UAE nationals) as its agent; or
- incorporate a subsidiary in the UAE, which must be at least 51% held by one or more UAE nationals.

Companies are also required to obtain a trade license and the Supreme Petroleum Council and ADNOC require companies to establish an office in Abu Dhabi.

Liabilities

Applicable legislation together with the concession and joint venture agreements establish a liability regime in respect of each concession.

Of particular concern are liabilities for environmental damage and pollution (further considered below) which are addressed, in part, by the following:

Federal Law No. 24/1999	<ul style="list-style-type: none"> • Any person causing damage, whether intentionally or negligently, to the environment is responsible for all costs of treatment and any compensation incurred as a result. • Financial penalties can be imposed in the event of failure to protect the marine environment in accordance with regional and international convention.
Abu Dhabi Law No. 8/1978	<ul style="list-style-type: none"> • The operator must pay compensation (in addition to indemnifying the loss of reservoirs) to the government for waste of hydrocarbons due to failure to adhere to standard petroleum industry practice. • The operator must take all precautions required to prevent pollution. If pollution occurs, the party involved must immediately take steps to remediate the pollution.

Transfer of rights

The relevant Emirate's approval is required prior to the transfer of concession rights.

Security

Foreign companies are usually not obliged to provide any security or guarantees in relation to the granting of concessions.

Decommissioning

General requirements in relation to decommissioning and abandonment are set out in Abu Dhabi Law No. 8/1978. Concession-specific requirements are then addressed in the relevant concession agreements. Operators must comply with general requirements relating to pollution and protection of the environment (as set out in Federal Law No 24/1999 and Abu Dhabi Law No. 24/1999 described above). Additionally, the UAE is party to the 1989 Kuwait Protocol, which requires that the UAE empower its national authorities with the right to require the operator of an offshore installation to remove the installation, in whole or in part and is also required to abide by any guidelines issued by the organization established by the contracting states when considering whether to remove any offshore installation.

Fiscal regime and tax

There is no federal tax law but Abu Dhabi, Sharjah and Dubai have passed corporate tax decrees. For example, article 6 of Abu Dhabi Decree No. 1/1965 states that those dealing in oil and gas will be taxed at 55% of income minus any tax credits the business receives from the Abu Dhabi government.

In practice, fiscal regimes for concession arrangements typically involve a mixture of royalty and income tax. Income tax of between 55% and 85% is payable on oil in Abu Dhabi, depending on the terms of the individual concession agreements, with rates and other fiscal terms negotiated by the Supreme Petroleum Council.

Exploration and production activities in the oil and gas sector will be treated as zero rated under the new value added tax framework implemented across the Gulf Cooperation Council from 1 January 2018.

Health, safety and the environment

The health, safety and environmental regime for the oil and gas sector in the UAE is again derived from a range of sources. Generally, Federal Law No. 8/1980, and Federal Law No 24/1999 will apply together with specific regulations, orders, technical guidelines and policies dealing with health and safety requirements.

There is a federal Ministry of Environment, Water, and Environmental Agency but, in practice, local environmental regulatory bodies monitor the implementation of environmental laws and regulations in each Emirate.

Environmental impact assessment and other permitting requirements are set out in Federal Law No 24/1999.

Comparison with Other Regimes

In the early 20th century, the concession regime (e.g., Iraq, UAE). was the most common framework by which IOCs acquired rights to explore and produce hydrocarbons.

Concession structures have developed over time and are now much more favourable to the state which retains permanent sovereignty over the hydrocarbons within its territory (with the IOC only receiving legal title to the hydrocarbons at the wellhead) and takes revenues from its equity participation, royalties and tax. There has been significant legal debate around whether concession agreements are considered contractual or regulatory instruments.

Other contractual regimes adopted by states include:

- production sharing agreements (e.g., Russia) which creates a contractual relationship between an IOC and the state with the former engaged as a contractor which will be entitled to hydrocarbons as payment in-kind; and
- service contracts (e.g., Saudi Arabia, Iran) under which the host state at all points retains full ownership of the hydrocarbons and the IOC is employed as a contractor in return for a fee.

Related Content

Legislation

United Arab Emirates

- The United Arab Emirates Constitution of 1971
- Federal Law No. 24/1999 on the Protection and Development of the Environment
- Federal Law No. 8/1980 Concerning the Regulation of Labour Relations

Abu Dhabi

- Abu Dhabi Law No. 1/1988 on the Establishment of the High Council for Petroleum in Abu Dhabi
- Abu Dhabi Law No. 8/1978 on the Preservation of Oil Resources in Abu Dhabi
- Abu Dhabi Law No. 12/1973 on Petroleum Ports in Abu Dhabi*
- Abu Dhabi Law No. 7/1971 on the Incorporation of the Abu Dhabi National Oil Company (ADNOC)
- Abu Dhabi Law No. 4/1976 on Abu Dhabi Emirate Ownership for the Gas
- Abu Dhabi Decree No. 1/1965 Abu Dhabi Income Tax Decree 1985

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Biography

- Tony focuses on business recovery and turnaround issues. His experience extends to construction, financial services, insurance and asset leasing industry sectors.
- Tony advises on contentious and non-contentious matters, including the restructuring and refinancing of companies and groups of companies involving debt-equity swaps, bank supported workouts and structured settlements of unsecured liabilities. In addition, he has advised on credit rating issues for banks and substantial companies, as well as on counter-guarantees in relation to substantial project finance initiatives.
- He advises lenders and insolvency professionals in relation to factoring arrangements. He also acts for insolvency professionals and purchasers on business and asset sales. Tony is best known for his work in the financial services insolvency sector, where he regularly advises insolvency practitioners, regulatory bodies, banks and counter-parties.



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 - Ms. Aleyaseen is also a partner in the Dubai office's Labour, Employment and Workplace Safety practice which is recognized and ranked by Chambers Global in 2014 and 2015. She acts as exclusive employment counsel to multinational corporations with operations in the MENA and GCC region.
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- Armando Arballo is an associate in the firm's Los Angeles office. Mr. Arballo's practice centers on complex dispute resolution, with a focus on construction litigation and restructuring and insolvency matters.
- He has experience in matters involving construction, oil & gas, employment and complex commercial litigation. Mr. Arballo has participated in many components of civil litigation and commercial arbitration, including authoring pleadings and motions, drafting and reviewing discovery requests, and facilitating settlement negotiations.