12.7.1 Algeria

**Sovereignty over national resources**

With Law 05-07 of 28 April 2005, Algeria has seen a thorough reformulation of its hydrocarbon legislation. The oil research and production organization has gone through different phases, namely, the 1958 Saharian Code – enacted after Algerian independence; the 12 April 1971 Order defining the framework within which foreign companies’ activities are carried out in the field of liquid hydrocarbons research and exploitation –; and the modified Law 86-14 of 19 August 1986, reorganizing oil activities through the introduction of new legal instruments such as the Production Sharing Agreement (PSA), the services agreement and various forms of gas partnership.

The principle of sovereignty over national oilfield resources is stated in art. 17 of the 1996 Algerian Constitution as follows: “Public property is an asset which belongs to the national collective […] It comprises the subsoil, mines and quarries, natural energy sources, mineral, natural, and living resources of the different national maritime domain zones”. This is reiterated in art. 3 of the 05-07 Law concerning hydrocarbons which states that all hydrocarbon resources, “discovered or not discovered, localized in the soil and subsoil of the national territory and maritime areas pertaining to the national sovereignty, are the property of the national collective, of which the state is the emanation”.

Moreover, in art. 5 of the law, a definition of what is meant by ‘maritime area’ is given as: “territorial waters and the exclusive economic zone”.

**The 05-07 Law**

The object of the 05-07 Law concerning hydrocarbons is more extensive than that of the previous Law 86-14 of 19 August 1986, the only object of which was “prospecting, research, exploitation and pipes transport activities”.

**Activities**

The law defines the legal status applicable to different activities, including those upstream and downstream. These mainly concern the activities which were previously under the national state companies’ monopoly, such as Naftec (refining), Naftal (distribution), and Sonatrach Spa (pipeline transportation).

The upstream activities concern research, exploration, development, pipeline transportation and open access to Third Parties’ activities concerning already discovered and operating oilfields. The downstream activities concern the freedom to carry out hydrocarbon refining and transformation activities (art. 77), including those linked to implementing the storing, marketing and distribution of hydrocarbon products (art. 78), as well as building infrastructures allowing the carrying out of such activities (arts. 77-79).

The law recognizes the principle of access to oil products’ storing and transportation facilities for third parties (art. 79).

**Institutional framework**

The Law 05-07 determines the institutional framework by separation of the public prerogatives from the economic and commercial activities previously carried out by Sonatrach. It also redefines the mission of this company. Indeed, Sonatrach Spa will only be charged with commercial activities and will have the same role as that of any given partner.

The law extends the prerogatives and objectives of the Minister in charge of Hydrocarbons who is endowed with the optimal valorization of national hydrocarbon resources. It has created two new
corporate bodies: the hydrocarbon regulation authority (l'Autorité de Régulation des Hydrocarbures) and the national agency for the valorization of hydrocarbon resources (Agence Nationale pour la Valorisation des Resources en Hydrocarbures, ALNAFT).

**Upstream organisation**

The regulation authority plays the role of any classic regulation authority. It regulates, defines and implements technical standards. This authority has a normative power in matters of security, hygiene, industrial security and environment safety. It establishes the specifications for implementing transportation and storing facilities, processes, applications for transport licences and the open access to transportation.

ALNAFT is partially charged with the following missions, previously entrusted to Sonatrach: a) setting up of a hydrocarbon research and exploitation data bank; b) launching and evaluation of calls for tenders; c) conclusion of agreements; d) granting of research and exploitation perimeters; e) follow-up and supervision of agreements which are carried into effect; f) delivery of prospecting permits; g) levying and transfer taxes and h) a general objective of investment promoting and developing of the concerned activity.

With regard to gas, ALNAFT is also entitled to keep and update a reserves account and periodically determine the reference prices, taking into consideration the highest among the following prices: the price prevailing under each agreement, and the reference price of the previous period. It also watches over the domestic market supply.

ALNAFT should keep in full confidentiality all pertinent information which it might have received from Sonatrach.

The law also defines the rights and liabilities of persons exerting one or more activities referred to above. By 'persons' it intends, in art. 5, “any foreign corporate body, as well as any Algerian private or public corporate body, possessing the financial and/or technical means required by the present Law and regulations referred to for its application”. With regard to retail trade activities, the notion of “person” includes natural persons.

The legislator has extended to Algerian private or public corporate bodies the possibility to intervene and act in the different upstream and downstream activities.

The mining domain is divided into four zones – A, B, C and D – subject to a regulatory law. Each zone is subdivided into parcels, the number and geodesic coordinates of which will be regulated by law. The purpose of this classification is to determine the applicable fiscal system.

**The prospecting permit and research and/or exploitation agreement**

A distinction should be made between the prospecting permit on the one hand, and the research and exploitation agreement on the other. The former is issued by ALNAFT to any entity which has applied for the implementation of hydrocarbon prospecting works. The prospecting permit may relate to one or several perimeters and is granted for a maximum period of two years. The conditions and modalities of granting the permit will be established by a regulatory text (art. 20). The prospecting permit will not, in any case, be granted over a parcel which has previously been granted under a research and/or exploitation agreement. The parcel which has previously been granted a research and/or exploitation agreement is systematically excluded from the one or several perimeters of prospecting (art. 21).

The entire set data and results obtained by the operator, during the carrying out of prospecting works, will necessarily be at the disposal of ALNAFT. Procedures relating to the communication of the said data and results will be fixed by a regulatory text (art. 22).

The mining claim, on the basis of which research and/or exploitation activities are carried out, is put at the state’s disposal by ALNAFT. The conditions of such a procedure will be ruled by a regulatory text.

This agreement recognizes an exclusive right over the contractual perimeter of carrying out research and exploitation activities. As for the exploitation agreement, it can be entered into only if the oilfield is declared to be commercially profitable. This permit does not give any right of property over the land. It is signed by the party contracting with ALNAFT and is approved by presidential decree at the Ministers’ Council session.

**Procedure of calling for tenders**

It is subsequently concluded through a call for tenders, the procedures of which will be fixed via regulatory channels.

Research and/or exploitation agreements are concluded after calls for tenders. A distinction is made between a research and exploitation call for tenders, and an exploitation contract call for tenders.

The choice is made according to the following general criteria: the minimum works programme for the first research phase; the non-deductible amount for bonus; and the proposed taxes ratio.

The call for tenders procedure takes place in two phases – a technical phase and an economic phase.
The evaluation criteria in the technical phase are: reclaiming ratio; production optimization; production facilities capacity; duration and minimum investment costs.

In the economic phase, the evaluation criteria are the proposed licence fee, the level of which should be higher than the minimum level fixed by law, or the bonus amount; this amount being non-deductible for tax purposes. The opening of bids related to the economic phase takes place publicly. However, the Minister in charge of Hydrocarbons may depart from this procedure “on a motivated and detailed report […] for general interest purposes”.

**Research and exploitation phase. Guarantees**

A classical distinction is made between the research period and the exploitation period.

A research period of seven years is divided into three phases; three years duration for the first period; and two years duration for the second and the third period.

The exploitation period lasts twenty-five years, i.e. for an already discovered oilfield, the exploitation contract period is twenty-five years. If the concerned field is a dry gas field, the period is extended to thirty years.

In the event of the discovery being declared commercially exploitable before the research period expiry date, the remaining years will be added to the exploitation period, up to a maximum sum total of thirty-two years.

The contractor should have the technical and financial capacities necessary for hydrocarbons research and exploitation activities. He should also deposit a bank warranty of good execution “payable in Algeria on simple request from ALNAFT, covering the minimum works to be carried out by the contractor during each research phase”. This warranty will be released proportionally to the carrying out of the different phases.

The termination will take place *ipsos iure* if the contractor has not declared the oilfield to be commercially exploitable.

The contractual perimeter is reduced to 30% on the first phase expiry and 30% on the second phase expiry.

The excluded area concerns any surface excluded by the contractor from the exploitation perimeter.

In so far as renunciation is concerned, the contractor may release all his rights and liabilities if, within the framework of the contract, he has met his minimum liabilities for the research period.

Land use and easements are warranted to the operator by art. 7 of the Law through land acquisition and expropriation for public utility purposes. They pertain to the regulating authority to introduce the necessary procedures and formalities when it concerns activities pertaining to hydrocarbons and notably those linked to transportation concession, and to ALNAFT when it relates to research and/or exploitation contracts.

**Technical aspects and anticipated production**

Technical aspects cover oilfield preservation, recovering, gas flaring and un-utilization.

It is compulsory to maintain optimal preservation of the oilfields (art. 49). Each oilfield developing programme should indicate the liabilities and expenditures. Injection of drinking water or of water suitable for irrigation, when used for recovering needs, is subject to tax payment. In this way, ALNAFT can control the water quantities used, and the development programme before authorizing it.

Gas producers should participate in meeting the needs of the Algerian domestic market on request from ALNAFT. Their participation is proportional to gas production subject to taxation (art. 51).

Gas flaring is forbidden, except if previously authorized by ALNAFT, subject to paying a royalty of 8,000 DA/Nm³ (Algerian Dinars per Normal cubic metre) (art. 52).

All the facilities should be repaired and adapted to the new standards within a period of seven years.

When an oilfield is declared commercially exploitable and extends over at least two perimeters – each one being the object of a separate contract – the concerned contractors should set up a joint programme for developing and exploiting the oilfield. This should be done after ALNAFT has notified this need to each contractor. This programme, called unitization program, should be submitted to ALNAFT for approval.

In the event of the contractors failing to come to any agreement within six months after receipt of ALNAFT notification or if ALNAFT does not approve the said unitization programme, the latter will appoint (at the contractors’ expenses), an expert selected on the contract annexed list in order to establish another unitization programme. The unitization programme established through expertise will be enforced as soon as it is ready.

In the event of the deposit which is declared commercially exploitable extending over one or several perimeters which are not subject to any contract, ALNAFT should proceed to a call for tenders in order to conclude an exploitation agreement regarding this deposit extension.

Subject to ALNAFT’s prior consent, the contractor may benefit from an anticipated production during a twelve-month period, with the
purpose of fixing the deposit development programme. The contractor shall submit to ALNAFT for approval a development programme comprising of cost evaluation, budget, exploitation perimeter delimitation and indications of measuring points (that is to say the determination of the hydrocarbons volume used for reckoning taxation).

For long-term strategy purposes, inherent to the domestic energetic policy, limitations of deposit production are liable to be applied. Those limitations are established by decree of the Minister in charge of Hydrocarbons who assesses quantities, duration and effective date (art. 50).

State participation

The contractor is not bound to be associated or to associate in advance with Sonatrach. The latter enjoys the right to opt for a participation of 20-30%. This option should be exercised within a period of thirty days following ALNAFT’s approval of the development programme. Sonatrach will not be able to transfer and/or yield the acquired participation before the expiry of a period of five years.

The agreement to be concluded between Sonatrach and the contractor will obligatorily contain a provision of joint marketing gas abroad (art. 48), subject to meeting the following requirements: reimbursement of research costs; payment of future costs and definition of either Parties’ rights and liabilities.

Sonatrach is bound to take charge of, in proportion to its participation, the investments related to the development programme.

This agreement, entitled operations agreement, is submitted to ALNAFT and approved by Decree at the Minister’s Council Session.

Specific provisions applied to Sonatrach

Whereas the state enjoys participation in the hydrocarbon activities via Sonatrach, the latter, according to arts. 103 and following, is bound to:

- Address to ALNAFT the delimitation of research and exploitation perimeters over which it operates within a period of thirty days after the constitution of ALNAFT itself, provided that: the perimeters which are not preserved by Sonatrach be subject to competitive bidding; and the perimeters which are preserved by Sonatrach be subject to contracting between this latter and ALNAFT within ninety days following Sonatrach’s decision to preserve or renounce the said perimeter.

- Submit to ALNAFT a developing programme related to the exploitation perimeters as well as the financial means necessary to its implementation. In the event of Sonatrach and ALNAFT not coming to an agreement over the development programme within a period of three-hundred-and-sixty days following the effective date of the agreement, the dispute will be submitted to the Minister in charge of Hydrocarbons, subsequent to the expertise within the delay previously mentioned.

Transitory provisions

These provisions govern the relationship between ALNAFT and Sonatrach, but present an interest for the contractor.

Article 101 states that the autonomy of the parties’ will be upheld as well as the legal intangibility and continuity of partnership. All contracts and additional clauses signed before the promulgation of the Law 05-07 will remain enforceable in the agreed terms, and remain so until their expiry date.

However, within ninety days a parallel contract will have to be concluded between ALNAFT and Sonatrach for each existing partnership contract. In the context of this parallel contract, Sonatrach shall return to the Minister in charge of Hydrocarbons the concerned mining claims, in order that the same be granted to ALNAFT.

Sonatrach will continue to exert the same prerogatives pursuant to the previous law, up to the signing of the parallel contract. ALNAFT will take over the said prerogatives as soon as the contract is signed.

Determination of gas and oil prices

The selling price of oil is duty-free. It should include the crude oil price before refining, refining fees, road and pipeline transportation fees, storage and distribution fees, as well as reasonable net profit from each activity.

The price of crude oil before refining is calculated using the average price of crude oil for export over the last ten calendar years on the basis of the export crude oil price statistics recorded and published by the Minister in charge of Hydrocarbons.

The selling price of gas on the domestic market should include: production costs; costs of infrastructures necessary and specific to meeting the domestic market needs; exploitation costs of infrastructures used to meet the domestic market needs; and reasonable margins for each activity.

The selling price of gas on the international market is periodically determined by ALNAFT and approved by decree of the Minister in charge of Hydrocarbons (art. 61).

The reference price is calculated as the highest price deduced from the price of each enforced contract and the reference price of the preceding period. This price should not be lower than the ratio of the Sahara Blend FOB (Free On Board) medium price of the previous quarter.
The FOB medium price is the price published by a specialized magazine which is authorized to act as a reference. As to the percentage, it is fixed and readjusted by the Minister in charge of Hydrocarbons according to the gas market.

**Transport**

Within the framework of the transport activity (arts. 68-76), the Law permits the implementation, investment and pipeline construction (excluding exploitation). This activity is officially recognized through granting a maximum period of fifty years (art. 71). Free access to existing or future transport facilities is recognized to third parties.

A distinction is made between the concession for transport requiring the carrying out of facilities to convey the quantities produced within the framework of a research an/or exploitation agreement and a transport concession contract.

Any concession claim is examined in advance by the Regulation Agency. Sonatrach may also, within the framework of any transport concession, make recourse to its participation option if need be.

The various technical criteria, competitive bidding procedures, pricing, principle of free access and the different technical standards will be subject to further regulations. In order to deal with the transport adjustment fees, a pipeline transport fund is set up.

**Property transfer**

Property transfer (arts. 80-82) for the state’s benefit is exempt from any charges. It will take place at the expiry date of the research and/or exploitation contractual period as well as at the expiry date of the pipeline transport concession. Three years before the contract expiry date, the state should opt either for the transfer or the repair of the site. Works and facilities to be transferred should be in a good operational state.

During the contract or the concession period, the contractor will constitute a deposit in an escrow account to cover costs resulting from abandonment and/or repairing of the site. The deposit amount is fixed by ALNAFT’s appointed expert(s) with regard to the research and exploitation agreement, and by the Regulation Agency for concessions.

With regard to the agreement of research and exploitation, the control of the site abandonment and repair is a joint liability of ALNAFT and the Ministry in charge of Environment. As to Concession, it is the joint liability of the Regulation Agency and the Ministry in charge of Environment.

**The fiscal system**

A deep recast of the oil fiscal system has been introduced by Law 05-07 (arts. 83-99). The fiscal provisions of this law are not applicable to contracts and additional clauses concluded before its publication. The new fiscal system is characterized by:

- a non-deductible surface tax payable to the Treasury;
- a royalty paid monthly to ALNAFT (arts. 25-26);
- an income tax on hydrocarbons payable monthly to the Treasury;
- an additional tax payable yearly to the Treasury; and
- a land tax on real estate other than those related to exploitation.

To these, the following specific-purpose taxes are to be added:

- a) 1% for transfer of rights (art. 31);
- b) 8,000 DA/Nm3 for gas flaring (art. 52);
- c) 80 DA/Nm3 for water assisted recovery (art. 53);
- d) tax on use, transfer or release of greenhouse exhaustion credit (tax to be defined by a regulatory text) (art. 67).

**Surface tax**

Surface tax (art. 84) is payment in proportion to the occupied surface, in km², and its allocation is calculated on the basis of: the period of research, retention and exploitation (Table 1).

The royalty (arts. 85 and 26) is levied on all quantities of extracted hydrocarbons and is calculated at the measuring point, that is the “location chosen within the exploitation perimeter where the decided quantities of hydrocarbons will be extracted”.

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**Table 1. Surface tax calculation**

<table>
<thead>
<tr>
<th>Zones</th>
<th>Research Period (years)</th>
<th>Retention Period as defined (art. 42) + Exceptional Period as defined (art. 37)</th>
<th>Exploitation Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zone A</td>
<td>1 to 3 inclusive</td>
<td>400,000</td>
<td>16,000</td>
</tr>
<tr>
<td>Zone B</td>
<td>4,800</td>
<td>560,000</td>
<td>24,000</td>
</tr>
<tr>
<td>Zone C</td>
<td>6,000</td>
<td>720,000</td>
<td>28,000</td>
</tr>
<tr>
<td>Zone D</td>
<td>8,000</td>
<td>800,000</td>
<td>32,000</td>
</tr>
</tbody>
</table>
The following hydrocarbon quantities are excluded from reckoning: consumed by the production direct needs; those lost prior to the measuring point; and those re-injected within the deposits. These exclusions take place in proportion to “technically acceptable quantities” (art. 26).

The tax is determined monthly for the hydrocarbons quantities extracted from the exploitation perimeter (art. 85). The applicable ratios vary according to zones and daily produced quantities. A distinction is made between the produced quantities inferior or equal to 100,000 barrel oil equivalent (boe)/d and a production superior to 100,000 boe/d (see Table 2).

As for the hydrocarbons quantities superior to 100,000 boe/day determined on the basis of a monthly average, the tax ratio provided for in each contract – applicable to the whole production – may not be inferior to the levels indicated in the Table 3.

The tax is deductible from the additional income tax (Impôt Complémentaire sur le Revenu, ICR) and is paid monthly, every tenth day, to ALNAFT. In case of failure to pay in due time, a penalty of 1‰ for each overdue day is required from the operator (art. 92).

### Tax on hydrocarbon income

The tax on hydrocarbon income (Taxe sur le Revenu Pétrolier, TRP) is payable monthly by the operator (arts. 86-87). It is equal to the annual production value of each exploitation perimeter from which the transport fee is deducted, that is to say: between the measuring point and the Algerian port; between the measuring point and the exploitation land boundary; between the measuring point and the selling point in Algeria (art. 91).

The following items are deducted from the TRP (art. 86): a) the royalty; b) annual portions of

<table>
<thead>
<tr>
<th>QUANTITY PRODUCED</th>
<th>ZONE A</th>
<th>ZONE B</th>
<th>ZONE C</th>
<th>ZONE D</th>
</tr>
</thead>
<tbody>
<tr>
<td>00 to 20,000 boe/d</td>
<td>5.5%</td>
<td>8%</td>
<td>11%</td>
<td>12.5%</td>
</tr>
<tr>
<td>20,001 to 50,000 boe/d</td>
<td>10.5%</td>
<td>13%</td>
<td>16%</td>
<td>20%</td>
</tr>
<tr>
<td>50,001 to 100,000 boe/d</td>
<td>15.5%</td>
<td>18%</td>
<td>20%</td>
<td>23%</td>
</tr>
</tbody>
</table>

### Exemptions

In so far as exemptions are concerned (art. 89), research-exploitation activities are exempt from VAT (Value-Added Tax), tax on professional activity (Taxe sur l’Activité Professionnelle, TAP), customs duties and taxes on imported goods and equipments linked with the listed activities, and any other charges.

Transport activities (art. 97) are exempt from VAT, duties taxes and customs duties on imported goods, equipment, materials and products allocated and used exclusively for that activity. A regulatory text will define and establish the list of goods and equipment to be exempted.

### Investment protection and environment protection

Guaranties granted to the contractor relate first to the approval of the research and/or exploitation agreement by Presidential decision taken in the

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### Additional tax based on results or income

The additional tax on results or on income, also called ICR (art. 88) is calculated according to the Corporate Income Tax rate (Impôt sur le Bénéfice des Sociétés, IBS). It is due, at the latest, on the expiry date of the period fixed for filing the annual financial statement (art. 95). As to the payment terms, they will be defined by a regulatory text.

A 1‰ penalty is imposed for each overdue day (art. 95).
Council of Ministers session and published in the Algerian Gazette.

A specific protection is afforded by recourse to international arbitration as a method of settling out disputes between the state or state-owned entities and the private investors under the different types of hydrocarbons agreements provided by the law.

Law 05-07 of 28 April 2005 related to hydrocarbons provides in its art. 18 that any entity or operator should prepare and submit to the hydrocarbons regulating authority an environment impact survey, and an obligatory environment management programme, comprising the description of measures for managing prevention and environmental risks associated with research and/or exploitation activities.

The hydrocarbon regulating authority is entitled to jointly coordinate those surveys with the Ministry of Environment and obtain the corresponding agreement of the concerned contractor and operator.

The environment impact survey should, as a minimum, contain the following elements:

- a) a statement on the activity to be carried out;
- b) a description of the site initial state as well as its environment which might be affected by the activity to be carried out;
- c) a description of the potential impact on environment and human beings’ health related to the activity to be carried out and suggestions about alternative solutions;
- d) a statement of facts on the cultural patrimony that may be affected by the activity to be carried out and its repercussions on the socio-economic conditions;
- e) a statement on measures allowing to reduce, remove and, if possible, compensate for the harmful effects on environment and health.

Besides these requirements, gas flaring is prohibited, unless previously authorized by ALNAFT, and subject to payment of a tax of 8,000 DA/Nm³ (art. 52).

The repair and adaptation of installations to the new standards should be implemented within a period of seven years.

Applicable law settlement of disputes

Thanks to the modifications introduced to the previous law, in the event of any disputes arising from the carrying into effect of research and exploitation agreements, a recourse to international arbitration is provided for the settlement of such disputes.

In case of failure of the conciliation procedure, art. 58 of the Law 05-07 clearly states that the dispute may be submitted to international arbitration, in conformity with the arbitration clause of the research and/or exploitation agreement, so as to permit the settlement of disputes in the manner chosen by the two contracting parties. However, when Sonatrach is the only party, the dispute is settled by arbitration of the Minister in charge of Hydrocarbons. The law to be applied is the Algerian Law 05-07 relating to hydrocarbons and the texts issued for its application.

12.7.2 Libya

Sovereignty on the oil resources and property and titles of them

The 1955 Hydrocarbons Law No. 25 states in art. 1 that hydrocarbons found in their natural state in the subsoil layers of Libya are regarded as state-owned property.

This sovereignty of the state over hydrocarbon resources intends to preserve – to the best of its ability – the wealth of the country for the Libyan people’s profit and to promote oil activity as a catalyst of the Libyan economy.

To this end – and to achieve the state’s goals – the opening of the country to foreign companies is the key to success. This policy can, in no case, be in contradiction with the principle of the state’s sovereignty over the oil resources. It constitutes a means of reinforcing the state’s presence and its major concern which is to develop the country.

This principle is underlined in the contracts of exploration and production sharing, concluded with the Libyan National Oil Company (NOC). A provision, integrated in this type of contract, stipulates that the contract signature does not give to the contracting state company any right of ownership on in situ hydrocarbons, extracted within the perimeter covered by the exploitation and production sharing contract.

<table>
<thead>
<tr>
<th>Table 4. Rates used to calculate TRP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Selling Price Expressed in 10⁹ DA as provided by art. 86</td>
</tr>
<tr>
<td>First level L1</td>
</tr>
<tr>
<td>Second level L2</td>
</tr>
<tr>
<td>Tax on Hydrocarbons Income Ratio</td>
</tr>
<tr>
<td>First level L1</td>
</tr>
<tr>
<td>Second level L2</td>
</tr>
</tbody>
</table>
The underground oil resources are the property of the state which disposes freely of them for its citizens’ profit.

From the reading of Law No. 25/1955 it can be seen that exploitation of oil resources is carried out according to three titles: prospecting licence; contract of privilege; and contract of exploration and production sharing, provided for by Decree 10/1979 of 5 August 1979, supplementing the Hydrocarbons Law of 25 November 1955. These titles are granted to any oil company wishing to carry out activities in the hydrocarbons sector in the territory of Libya (the ‘holder’).

Structure of hydrocarbon regulation

**The prospecting licence**

Any hydrocarbon activity is subject to prior agreement of the state through its Council of Ministers.

The 1955 Hydrocarbons Law distinguishes between the prospecting licence and the contract of privilege.

Prospecting is subject to an application to the Ministry of Oil which reserves the right to give favourable advice to this application. The acceptance by this competent authority will be materialized through the granting of a licence for specified zones for a limited duration. As a counterpart of this grant, the holder will have to pay a tax of 500 Libyan dinars.

In no event does the prospecting licence give the right to its holder to carry out drilling and/or research activities. Any contrary step will result in depriving the holder of the right to prospect, and make the aforesaid granted licence subject to cancellation by the Ministry.

**The contract of privilege**

In so far as the activities such as drilling, research and others are concerned, these must be subject to a contract of privilege. In this case, the Ministry for Oil publishes – through local and international press – an official statement relating to the oil zones eligible for an application for a contract of privilege. The contract of privilege gives its holder the right to carry out geological and geophysical prospecting, research, drilling works and to extract hydrocarbons from the perimeter defined by the contract. Moreover, the holder will have the right to carry out the transport of the extracted hydrocarbons by pipes or other means and, in general, to carry out their refining, storage, export and use.

In order to bring the contract of privilege operations to a successful result, the contract holder will have to carry out investments in the project and make sure that the execution of its contractual liabilities is in conformity with the standards and uses on the matter, namely: extract hydrocarbons in sufficient and reasonable quantities, subsequent to their discovery, by taking into account the world demand and the oil resources economic use within the contractual perimeter.

**The contract of exploration and production sharing**

The contract of exploration and production sharing is concluded between NOC and a foreign company operating in the hydrocarbon sector and carrying out its activity in the Libyan territory. The contract of exploration and production sharing is concluded in accordance with the provisions of Law No. 25/1955 which lays out that all hydrocarbons located in Libya’s territory are the state’s national wealth. As to NOC, the company holds the exclusive right and authority to develop and produce hydrocarbons within and beyond the contractual perimeter.

The contract of exploration and production sharing concluded between NOC and the foreign company must be approved by the General Popular Committee of the Libya Jamahiriya. The object of the contract relates to the hydrocarbons exploration and production sharing within the contractual perimeter. The contract does not give any right of ownership to third parties on the hydrocarbons located within the contractual perimeter. Moreover, in addition to the determination of the hydrocarbons produced and reserves quantities, the exploration and production sharing contract also takes care of the financing of the operations led within the contractual perimeter, as well as the nature of the operations and the conditions under which those will have to be carried out.

The contract of exploration and production sharing has two phases – a first phase of exploration and a second of exploitation. At the expiry of the exploration period, the holder will preserve only the lots having given commercially exploitable results.

During the exploitation period, the contract holder – as long as it has carried out the work programme as well as the minimum expenditure programme – can proceed to the cancellation at any time – provided that NOC has been notified with one year’s notice prior to the cancellation date. The exploitation perimeter contract will thus be considered as legally terminated. Any amount due on account of the perimeter exploitation will consequently be due and payable on the contract cancellation date.

During the notice period, the holder will continue to enjoy the totality of the rights which were granted to him by the contract of exploration and production sharing and will have to carry out all its obligations without limitation, including the budgetary.
expenditures and/or those approved by the Committee of Management. The contract holder’s withdrawal can, in no case, discharge it from its contractual liabilities towards NOC, nor exempt it from the execution of any obligation or responsibility which would be attributable to it and which were not identified or could not have been identified before the holder’s withdrawal from the exploration and production sharing contract.

The contract of exploration and production sharing provides for the setting up of management committees in charge of the control and supervision of the operations carried out within the framework of the contract. These committees, which are made up of four members (two members appointed by NOC, and two by the holder), must be set up within a period which should not exceed one month following the effective date of the exploration and production sharing contract.

The Committee of Management has the power to take any important decision relating to the hydrocarbon operations including, without limitation, the approval of the programmes of works as well as the relevant budgets. The decisions of the aforementioned committee are unanimously made. The Committee of Management is the body charged to declare a commercial discovery. When the Committee of Management declares that a hydrocarbon discovery is commercially exploitable, the contracting parties conclude a shareholders’ agreement: according to its terms, a company, which should act as operator, will be set up and will take charge of the operations of development and exploitation under the name and on behalf of the contracting Parties. This is in accordance with an agreement related to the carrying out of operations concluded between the same parties.

The operator will have to carry out its activity within the framework of the laws and regulations in force in Libya. It should be noted that in a company of Libyan law, created in accordance with the contract of exploitation and production sharing, the operator, by all means, engages its responsibility towards the shareholders in case of loss, damage or complaints of any nature. The operator is not, in any case, responsible for the indirect effects related to any loss or damage. The operator will have to submit a programme of work for the Management Committee’s approval, as well as a budget for each year of the exploration period. Moreover, he will have to submit for approval a programme of work, as well as a cost report for the next four years during the exploitation period. The operator will be charged to carry out the work programme and budget submitted to the approval of the Committee of Management, and will not be able to launch or to carry out any operation which would not appear in such a programme, except for the cases which will be stated in the contract and submitted to the authorization of the Committee of Management.

In all cases, the foreign party of the shareholders’ agreement will have to pledge a minimum of exploration work in order to support the programme of exploration.

In the contrary case, it will have to pay to NOC compensations and allowances due to the fact that the exploration programme was not completed.

The operator will have to present a detailed report of the discoveries carried into effect within the contractual perimeter and declared commercially exploitable, for the approval of the Committee of Management. Moreover, before marketing any quantity of hydrocarbons produced, the operator will have to submit a programme to the Committee of Management.

The contract of exploration and production sharing envisages the setting-up of the Committee of Management in charge of hydrocarbons production control to assess the yearly quantities the operator would have estimated and delivered to the parties for the period beginning with the commencement of the production marketing.

Each party has the right and the obligation, jointly or separately, to proceed with the sale of its production share and to freely dispose of it. The production sharing will be carried out in accordance with the provisions and terms agreed upon in the exploration and production sharing contract.

It should be noted that all expenditure related to the production operations are the exclusive responsibility of the contract holder. The exploration and production sharing contract is governed by the Libyan law.

Operating conditions

The operation of the oil activity, such as it is stated by Law No. 25/1955, has to meet a certain number of conditions, as follows.

Surface area. For the purpose of the application of the 1955 Hydrocarbons Law provisions, the Libyan territory is divided into four oil zones: section 1 covers all the provinces of Tripoli and the Western mountain, the az-Zawiya, Homs and Misratah; section 2 covers the provinces of Benghazi, the Green hill and Darna, located at the North of parallel 28; section 3 covers the provinces of Benghazi, the Green hill and Darna located at the South of the parallel 28; and section 4 covers the provinces of Sebha and Oubari.

Renunciation. The holder of the contract must reduce 75% of the initial surface of the contractual perimeter within five years as from the date of the contract enforcement. A second reduction of 50% of
the initial surface will have to be operated within eight years, starting from the aforementioned date. Moreover, a third reduction of 30% of the initial surface is envisaged for the perimeters situated between zones 1 and 2, and 25% of its total surface for the perimeters situated between the zones 3 and 4 and within 10 years from the contract enforcement date.

The contract holder will have to notify a written advise to the Ministry of Oil one month prior to any renunciation relating to the perimeters to be given up. The contract holder can, at any time, give up the totality or half of the contractual perimeter, provided that it communicates this to the Ministry of Oil by addressing a written notice at least three months prior to any renunciation.

The contract holder is free to choose the surfaces which it will renounce, in the cases quoted above, respecting the following conditions. First, the surface – object of the renunciation – consists of one whole piece. The pieces forming the area object of the renunciation can be two if the surface of the contractual perimeter exceeds 12,000 km². This is unless the Minister in charge of Oil stipulates otherwise, in conformity with the legal provisions. Second, the surface subject to renunciation is delimited by the lines mentioned on the official chart, established by the ministry and attached to one or several pieces of the contractual perimeter, unless the Minister in charge of Oil stipulates otherwise in conformity with the legal provisions.

The notification of renunciation will have to be accompanied by an official chart established by the Ministry of Oil of a detailed plan indicating the surfaces which the holder intends to give up, while specifying those that it wishes to keep.

The contract of privilege holder continues to enjoy the rights and advantages granted to him over the contractual surfaces which it did not give up. The rights and advantages concerning the surfaces which the holder gave up will cease to exist. It is the same for the applicable liabilities, except those relating to the holder’s claims to those surfaces which he did not yet give up.

**Programme of works**

In conformity with the law, the holder of the contract of privilege must, within eight months as from the date of granting the privilege, carry out hydrocarbon prospecting works within the contractual perimeter. Moreover, it must promptly implement the work imposed by the contract, in accordance with the requirements of the applicable code of practice and the related technical precepts, and by adopting the adequate scientific processes. In order to achieve the goals mentioned in the contract of privilege, the holder will have to carry out the programme of minimum expenditures provided for by the contract, whether these expenditures are made in Libya or outside its territory. The aforementioned expenditures cannot, in any case, be lower than the sums mentioned below (see further), relating to the minimum programme of works. Such programmes mainly concern prospecting, research and drilling works, including expenditures relating to these works and to the general and administrative organizational costs, as well as other general expenditures.

These expenditures are distributed as follows.

For the contracts of privilege granted in zones 1 and 2: an average of 1.50 Libyan dinars per annum, per km², during the first five years, and involving the totality of the surface of the piece granted in the concerned zone; an average of 3.50 Libyan dinars per annum, per km², during the following three years, and involving the totality of the surface of the piece granted in the concerned zone; an average of 6.00 Libyan dinars per annum, per km² for each five-year period. This tariffing is applied to the totality of the piece surface of the concerned zone.

For the contracts of privilege granted in zones 3 or 4, an average of 1.50 Libyan dinars/year per km² during eight years for the totality of the piece surface in the concerned zone; an average of 3.50 Libyan dinars/year per km² during the following four years and covering the totality of the piece surface in the concerned zone; an average of 6.00 Libyan dinars/year per km² for each of the five-year periods. This tariffing is applied to the totality of the surface of the piece in the zone concerned.

The whole sum spent by the holder during each work period concerned which exceeds the minimum amount fixed for the aforementioned period will be carried forward with the companies’ profit, in accordance with the exchange regulations in force for any such period.

If it appears to the Ministry of Oil after expiry of half of one of the above-mentioned work periods, that the contract of privilege holder failed in its obligations in an oilfield zone, the Ministry can require the holder to present an insurance under the form of financial titles or banking guarantees for an amount which will not exceed the total of the sums which it was committed to spend in the aforementioned zone.

At the end of the aforementioned period, a requisition of this insurance can be made by the Ministry for Oil, as to the amount of expenditure which the contract of privilege holder failed to spend.

**State participation**

The Libyan state takes part in the oil activity through NOC.
Indeed, the NOC plays an important part in the hydrocarbons sector of Libya. Any foreign company wishing to carry out an activity in the sector of hydrocarbons must – besides its registration as a foreign subsidiary company by the General People’s Committee of Foreign Relations and International Cooperation – be recorded at the Office For Foreign Companies at the NOC.

The wide nationalization programme of the oil companies sector, launched by the Libyan authorities in 1972 and 1973, made it possible for the NOC to acquire 51% of each company operating in the hydrocarbons sector in Libya at that time.

The participation of the state, through the NOC, has developed even more thanks to the concession of exploration commonly called round of exploration, for which all the agreements of hydrocarbons exploration are signed between the foreign oil companies and NOC. The latter makes it possible for the Libyan state to follow and exert control over foreign companies operating in Libya. Indeed, NOC is given the responsibility of choosing the companies which may be authorized to operate in Libya. NOC’s choice is made on the basis of a meticulous examination of the registration file.

Oil and gas pricing

The price for Libyan crude oil is fixed on the basis of the open market price for full cargo individual commercial sales, and takes into account the contractual provisions concluded between the Ministry for Oil and the contract of privilege holder. However, if there is not an open market for the commercial sales for full Libyan crude oil cargo, the prices will be equitably fixed by agreement between the Ministry and the contract holder. With regard to the contractual perimeter and a corresponding amount, the Ministry and the contract holder must, for each contract governed by the provisions of the Law No. 25/1955, pay the following:

- A tax of 100 Libyan dinars for each km² of the contractual perimeter and a corresponding amount, in the following way: a) for pieces in zones 1 and 2: 10 Libyan dinars, for each of the first eight years of the contract; 20 Libyan dinars for each of the seven following years. However, if the contract holder makes a hydrocarbon discovery in commercial quantities during the above 15 years, the amount of the rent is immediately raised to 2,500 Libyan dinars/year for the remaining period. This same rent amount is calculated for the year of discovery; b) for pieces in zones 3 and 4: five Libyan dinars for each of the first eight years of the contract; 10 Libyan dinars for each of the seven following years. However, if the contract holder discovers hydrocarbons in commercial quantities during the aforementioned 15 mentioned, the rent is immediately raised to 2,500 Libyan dinars/year for the remaining duration of the contract. This same rent amount is calculated for the year of discovery; c) 3,350 Libyan dinars for each of the five year periods, starting from the end of the fifteenth year up to the end of the twentieth year of the granted contract; d) 5,000 Libyan dinars for each remaining year of the contract.

- A royalty equal to 16.67% of the total value of the natural gasoline field which the privilege contract holder obtains in the contractual perimeter as well as the oil (except for natural gas) extracted and preserved on the oilfield site, after separation of water and deduction of the quantities of oil, petroleum products and natural gasoline used by the contract holder when executing his works programme in accordance with the contract provisions. The royalty ratio of natural gasoline and oil (except for crude oil and natural gas) is calculated according to guidelines occasionally modified by the Ministry for Oil and the contract holder. With regard to the natural gas extracted within the contractual perimeter that the contract holder sells and delivers in Libya, a royalty of 16.67% of the selling price – from which will be deducted the costs of transport starting from the well – will be paid by the contract holder and will not be reimbursed by the purchaser.
• A royalty equal to an amount of 16.67% of the price of the natural gas extracted within the contractual perimeter and exported from Libya by the contract holder.

In that case, the natural gas price is fixed according to the price of the selling place, after deduction of any taxes, interests, and transport charges from the wells, paid by the contract holder and which will not be reimbursed by the purchaser.

The Ministry for Oil has the right to the royalty for each year in cash – in whole or in part – provided that it will address a written notice to the contract holder to that effect. Each quantity of oil or natural gas that the Ministry for Oil decides to allot to itself must be delivered by the contract holder aboard ship at the navigational limit point in Libya.

The amount of royalty due for the perimeter object of the contract of privilege for each year is offset by the amount of the yearly rents paid for the aforementioned year, provided that these rents are not, in any case, lower than 2,500 Libyan dinars for each 100 km² surface.

All taxes, land rents, royalties and additional taxes pursuant to the Hydrocarbons Law of 1955, as well as income tax, are payable to the Treasury, through the Ministry for Oil.

The amount of income due to the Ministry for Oil and any other Libyan governmental authority or to the communes or other authorities, central or local, resulting from production, industrialization, collaboration in the hydrocarbons field, as well as the related rights such as transport, sales, exports, loadings, the yielded profits and their sharing, and that of the crude oil produced or sold in Libya or exported from it by the privilege contract holder will be equivalent – for each complete commercial year – to the sum the Libyan government has the right to cash in yearly, calculated in accordance with the privilege contract, taking into account any modification in accordance with Hydrocarbons Law No. 25/1955. However, an exemption from certain taxes on imported and exported goods is granted.

The licensee or the contract of privilege holder (akin to his collaborators) are authorized to import without payment of customs taxes the following items: apparatus, machines, materials and products; and goods according to their designation, in agreement with the Customs Code. The exemption from customs taxes is applicable, provided that the aforementioned imported materials and equipment are intended for their use in Libya within the framework of hydrocarbons prospecting, research, drilling, extraction, transport and filtering or any other related operation.

This tax exemption is not applicable for the equipment which is already in Libya, and the price of which approaches and/or does not exceed the actual value. Thus, at the time of comparing the prices, it is necessary to add to the goods prices such as the customs tax, as well as the other overheads until their point of destination in Libya.

The other goods, which are subject to customs duties, in accordance with the Customs Code, may not be exonerated from the taxes in question. Any person wishing to sell imported goods, free of customs taxes, in accordance with para. 1 quoted above, or transfers its property, will be liable to present a declaration to customs before selling or transferring the property in question. Moreover, if import taxation is required according to the Customs Code, such persons will have to pay a tax fixed by the Customs General Manager. This is unless the property sale or transfer is operated for the benefit of a licensee or a contract of privilege holder enjoying the aforementioned exemption.

The oil and its derivatives extracted in Libya, as well as the goods imported which are exempt from customs duties, in accordance with para. 1 quoted above, can be exported exempt from customs duties and obtain an import export licence. This is in accordance with the state’s general policy related to importation, without derogating from the legislative restrictions required by the state on production in case of wars and other major events.

**The oil agreement**

Authorizing one or more companies to carry out an oil activity in Libya is subject to a contract of privilege signed between the Ministry for Oil and the applicant company/ies.

The Ministry for Oil grants contracts of privilege which state the oil activity control procedures. Details, such as the additional interests and advantages offered by the applicant can be added, as long as they make it possible to reduce the rights, interests and advantages in terms suitable for the Ministry for Oil in conformity to Hydrocarbons Law No. 25/1955.

Before granting the contract of privilege, the Ministry for Oil will require the applicant to make a statement of honour, committing him to abstain from any political activity in Libya. The Ministry for Oil (before granting the contract of privilege) can require from the applicant guarantees in the form of banking titles or warranties of a specified amount, not exceeding the sum of 50,000 Libyan dinars, in order to guarantee the good execution of the obligations stipulated in all the contracts of privilege delivered in Libya.
The aforementioned sum is fixed for the duration of the contract of privilege. The General Manager of the Customs will have to keep this sum as a necessary guarantee, as provided for in the Customs Code.

The contract of privilege is issued for the duration fixed by the applicant in his request, provided that it does not exceed fifty years. This duration can be extended but cannot exceed sixty years.

In conformity with the provisions of the Hydrocarbons Law No. 25/1955, no contract of privilege can be issued for a perimeter included in another granted contract of privilege. The Ministry of Oil can grant contracts of privilege which bring together joint areas, located in two or more of the oil zones.

The limits of the zone object of the contract of privilege – delivered in accordance with the provisions of the Hydrocarbons Law No. 25/1955 – should conform to the boundaries indicated in the chart established by the Ministry for Oil.

The maximum number of contracts of privilege and surface areas the holder is authorized to gather together in one time is as follows: three contracts of privilege in zones 1 and 2; four contracts of privilege in zones 3 and 4, while knowing that the Ministry of Oil can issue contracts of privilege exceeding the authorized number. Thus, it must carefully examine the requests which are addressed to him and the perimeters object of the contracts of privilege. The perimeters which contain oil and gas wells are not taken into account when calculating the maximum limits: 30,000 km² in the zones 1 and 2 and 80,000 km² in zones 3 and 4.

The contract of privilege holder is allowed to penetrate the non-granted areas located at the contractual perimeter borders; that is those areas not having an owner. The holder can occupy them without financial compensation with an aim to carry out his work, provided that they are not legally occupied by a third party.

However, if the contract of privilege holder does not conclude a friendly arrangement with the owner of the ground or his legal occupant, on the conditions allowing him to occupy this real estate, the contract holder must inform the authority.

In the event of the occupation of this real estate being for a period which does not exceed one year, the authority will be able to authorize the occupation temporarily, provided that the contract of privilege holder has given to the Ministry for Oil a sum of insurance – the amount of which is to be estimated by the authority. This insurance will be regarded as financial compensation for the owner or the legal occupant of the real estate in the event of non-utilization or the suffering of damage.

If the occupation of the real estate exceeds a period of one year, the Ministry for Oil will be able to authorize the contract of privilege holder to occupy the real estate, provided that it has paid the fixed allowance amount due to it.

The Ministry for Oil will have to take all necessary steps to make it possible for the contract of privilege holder to take possession of the real estate in accordance with the provisions of the law in force. In this case, the company’s deeds would be considered similar to the public interest deeds.

If litigation arises on the nature of the right of people over this real estate or over the compensation amount that the contract of privilege holder must pay, the Ministry for Oil will submit the litigation to the competent jurisdiction in order to evaluate the amount allowance. The Ministry for Oil will pay the sums fixed by the court.

The contract of privilege does not give any right to its holder to carry out works on the reserved cemetery areas, the spot of specific places of prayer and archaeological sites. All the artistic and archaeological parts, discovered by the contract of privilege holder are subject to the controls set out in the Hydrocarbons Law No. 25/1955.

Drilling operations as well as dangerous works, at a distance of less than 50 m from public places or buildings cannot be authorized without the Director’s agreement and after having taken all precautions required in this matter.

Investment protection and environmental protection

The hydrocarbons sector constitutes the engine of the Libyan economy. It benefits from the Hydrocarbons Law No. 25/1955, which highlights the interest and importance attached by the Libyan state to this sector and the efforts it deploys to protect the investment in this field.

The distinction between the hydrocarbons sector and other activities as it appears from the provisions relating to investments, allows to note that the oil activity is the main anchoring point of foreign capital. The Libyan state, conscious of this importance and the determining role that the oil industry plays in the development of the country, has been able to attract, thanks to the Oil Law, several foreign investors through rounds of exploration.

For all these reasons, the Hydrocarbons Law No. 25/1955 was promulgated with the aim of attracting the foreign investors in offering them many possibilities of investment and development.

The provisions of the Hydrocarbons Law, No. 25, suggest that the legislator took care of the foreign investments protection by: exonerating the contractor...
from certain taxes on imported and exported goods; granting oil transport facilities by pipeline; granting the possibility to the contractor to build a factory for refining its extracted oil.

As a complement to these advantages, one must add the increasing desire of Libya to dynamize oil exploration by proposing blocks to foreign companies, through the means of ‘round of exploration’, for which contracts of Exploration and Production Sharing Agreement (EPSA) are signed with NOC.

The characteristic of the Round of Exploration, is that the costs of exploration are refunded by the production. The production costs are shared between the alien company and NOC (oil cost), and the sales products are given on the basis of a variable scale (oil profit).

The provisions for environmental protection can be seen in the guise of a certain number of measures that the company holding the contract of privilege must respect.

The measures imposed by the 1955 Hydrocarbons Law concern only what must be taken care of after, and not before, the undertaking of activities. It essentially concerns site repairing, draining and closing of all the drilling points and wells before their abandonment.

**Regulations regarding currency exchange**

The company is subject to the exchange control system in force in Libya as follows:

- Within the limit where amounts exceed the company’s needs for its activities in Libya, the company has the right to keep abroad any sum available to it, including the receipt of the sales. However, the company must present at the Office of Central Exchange of Libya its currencies account statements or its Libyan oil sales assets.
- The company can transfer the exceeding sums which it will not use within the framework of its activities in Libya to the countries from which it received these sums for its activities, provided that this transfer takes place in the currency of these countries.
- The company has the right to sell or buy any currency, be it Libyan or other, at suitable rates of exchange, through authorized exchange offices. This will make it possible for the company to undertake its activities in Libya and carry out the transfer quoted above.
- No restriction is required for the company’s currency import, with an aim of carrying on its activities related to the contract implementation.

**The applicable law and settlement of disputes**

The Libyan government makes sure that oil operations are controlled well, as it has multiple oil contracts with oil companies. It therefore takes all necessary measures to guarantee the company’s contractual rights. These contractual rights, clearly stipulated in the contract, cannot be modified without prior agreement of the two parties.

However, during the contractual period, the interpretation of the contract will be made in accordance with the provisions of the Hydrocarbons Law No. 25/1955, and the regulations promulgated during the contract validity.

No modification or cancellation of these regulations will be applied to the company’s contractual rights without its prior written agreement. The Libyan law will be that applicable to the contract.

Litigations opposing the Libyan state to the holder arising out of the interpretation and/or execution of the contract provisions or its appendices, or the rights and obligations of one of the contracting parties, for which the amicable settlement has failed, will be made subject to arbitration.

Two arbitrators will be designated; one by each of the parties. The latter will choose a President. In the event of disagreement, as for its designation, and within sixty days from the date of the nomination of a second arbitrator, each party will be able to file a recourse to the President of the International Court of Justice or its representative (if the President is Libyan or citizen of one of the countries in which the company was created) to designate it.

The arbitration procedure will begin after deposit of a written request for arbitration by one of the parties, in which the object of the arbitration as well as the name of the arbitrator designated by this party will be mentioned.

The other party upon receipt of a copy of this request by its counterpart will have ninety days from the date of its receipt to designate an arbitrator, under the penalty that the other party will request the President of the International Court of Justice to carry out the designation of only one arbitrator. The latter’s decision will be binding for both parties.

The President of the Arbitration Board, or the single arbitrator can in no case be a Libyan citizen or a citizen of the country in which the holder was incorporated or a citizen of the country of the company which controls it.

In the event of the two party-appointed arbitrators not coming to an agreement regarding the decision of the dispute within six months from the beginning of the arbitration procedure, the President of the Arbitration Board will intervene in this procedure. The parties will be bound either by its decision or by that of the single arbitrator.
12.7.3 Tunisia

**Sovereignty over hydrocarbons resources**

All hydrocarbon deposits localized in the Tunisian subsoil territory and in the Tunisian off-shore territory form part of the Tunisian state’s public domain as national wealth. This is stipulated in art. 4 of Law 99-93 of the 17th August 1999, relating to the promulgation of the Hydrocarbons Code.

The introductory text of the Tunisian Republic Constitution stipulates that the exploitation of wealth should be carried out for the benefit of the nation. This principle can be interpreted in a way that wealth is not the direct and absolute ownership of Tunisia but that its exploitation by third parties should be carried out for the benefit of the Tunisian nation.

However, sovereignty of the Tunisian state over oilfields is made less stringent by the fact that prospecting, research and exploitation activities, in addition to their being undertaken by the state, can also be undertaken by foreign private undertakers (the ‘undertaker’), provided that the latter possesses the financial and technical resources to implement the activities.

The impact of the Tunisian sovereignty over its oilfields appears clearly in the order of priority use of the natural gas produced in Tunisia. Thus, art. 65 of Law 99-93 mentions that gas use is subject to the following order of priority: its use by the holder of the permit; meeting the Tunisian domestic market needs; and export.

**Ownership and title to hydrocarbon resources**

Pursuant to the Tunisian legislation (Law 99-93 relating to the promulgation of the Hydrocarbons Code), the hydrocarbons mining titles are: a) the authorization of prospecting; b) the permit of prospecting; c) the permit of research; d) the concession of exploitation; e) the production sharing contract.

Any hydrocarbons research, prospecting and exploitation activity undertaken in Tunisia cannot be initiated without prior granting by the authority, and obtention by the operator, of one of the aforementioned titles.

**Prospecting authorization**

The authorization of prospecting is governed by art. 9 of the Hydrocarbons Code. It allows the holder to implement preliminary prospecting works, excluding all seismic surveys drilling operations. In the event of the authorization holder proceeding with works other than those for which it has a right, the prospecting authorization can be cancelled by the granting authority.

The prospecting authorization is granted by the Minister in charge of Hydrocarbons, and is issued for a period not exceeding one year. The granting of the prospecting authorization is not exclusive. Indeed, in the same prospecting area, the authorization can be granted to several applicants. Moreover, the prospecting authorization may be subject to the granting of an area covered by other titles, notably by a prospecting permit or a research permit.

When the validity period of the prospecting authorization expires, the holder of the authorization or the applicant must submit to the granting authority – namely the Minister in charge of Hydrocarbons – a full copy of all the surveys carried out and the information collected by the works done in the relevant area.

The failure to respect the obligation by the applicant to provide surveys and tests carried out during the validity period of the prospecting authorization will lead to penalties for the applicant. In this case, the applicant will not be able to obtain either a prospecting permit or a research permit, nor will the applicant be able to hold shares in valid permits or concessions.

**The prospecting permit**

The permit of prospecting is governed by art. 11 of the Hydrocarbons Law and is granted by the Minister in charge of Hydrocarbons by means of a decree, after consulting and receiving corresponding advice from the Hydrocarbons Consultative Committee. This is delivered for a period of two years. This duration can be extended for twelve months by decree of the Minister in charge of Hydrocarbons when the application is made by the permit holder and the Hydrocarbons Consultative Committee grants its favourable advice to the extension of the prospecting permit duration.

The prospecting works could be carried out by the Tunisian state itself, but the prospecting permit may also be delivered to Tunisian or foreign public or private companies which own the financial and technical resources necessary to carry out prospecting works in the best conditions.

Contrary to the prospecting authorization, the prospecting permit cannot be issued for the carrying out of prospecting works within an area already covered by a prospecting permit, a research permit and/or an exploitation concession which are prior in time to the prospecting permit.

The works authorized by the prospecting permit are geological or geophysical works, excluding drilling operations. The whole prospecting works should be carried out exclusively within the limits of the area defined by decree of the Minister in charge of...
The failure to respect the provisions related to the nature of works authorized by the prospecting permit may involve the cancellation of the prospecting permit. The Minister in charge of Hydrocarbons issues a decree of cancellation of the prospecting permit after having heard the holder thereof on the infringements imputable to him and after receiving the Hydrocarbons Consultative Committee’s advice.

The prospecting permit is granted with the aim of implementing prospecting works for the whole elementary perimeters, stipulated in art. 13.2 of the Hydrocarbons Code as being perimeters of square form, each one having a surface of 4 km². The elementary perimeters sides are oriented according to the North-South and East-West directions, composed of portions defined by parallels and meridians. As to summits of the elementary perimeters, they are defined by marks, fixed case by case by Decree published in the Tunisian Republic’s Gazette.

In addition, an application for a prospecting permit is receivable only in the event of it relating to a surface constituted by a whole number of elementary perimeters. However, if the application of the prospecting permit relates to an area delimited by an international frontier constituted, partly, of elementary perimeters, the holder of the prospecting permit has to deliver to the granting authority (on the date of expiry of the permit validity period) a copy of the seismic surveys and all the information and data records which might have been collected by it during the carrying out of the prospecting works authorized by the permit.

The prospecting permit can, on request by his holder, be transformed in a research permit provided the holder applies to the granting authority, i.e. the Minister in charge of Hydrocarbons, two months before the expiry of the prospecting permit.

The research permit

The research permit is delivered by Decree of the Minister in charge of Hydrocarbons, after consultation and favourable advice of the Hydrocarbons Consultative Committee. The said Decree is published in the Tunisian Republic Gazette. The research permit is granted for a period of five renewable years.

The research permit is granted by the authority only to the applicants owning a real or elected residence in Tunisia or, failing this, which have previously appointed a representative residing in Tunisia. This implements the Tunisian state’s will to allow the execution of research tasks only to entities equipped with certain means and established in Tunisia in one form or another.

The research permit application is accepted only when it is related to a surface constituting a whole number of elementary perimeters. However, as it is the case for the prospecting permit, the research permit application is also receivable when the area, object of the research permit, is delimited by an international boundary and constituted by portions of elementary perimeters.

When filing the research permit application, the applicant commits itself to carry out a programme of research work, in particular drilling and geophysical works. The importance of the work programme is related to the fact that the research permit is granted on the basis of the financial and technical capacities of the applicant of the research permit as well as the nature and significance of the work programme presented by him.

In the Tunisian legislation (Law No. 99-93 related to the promulgation of the Hydrocarbons Code), the research permit delivered by decree of the Minister in charge of Hydrocarbons is governed by the Specific Convention regulated by arts. 19-22 of the Hydrocarbons Code.

The Specific Convention authorizes research and exploitation of oilfields. This convention regulates the whole operations related to the research permit undertaken by the holder, and which are, directly or indirectly, related to the research permit and the concessions which are liable to be authorized at the research works termination. The Specific Convention will last as long as the research works implementation will last, and in the case where these research works happen to be profitable, its duration will be extended for the time needed for issuing the exploitation concession.

In accordance with the Specific Convention, the research permit holder shall carry out a certain amount of works on the perimeter applied for during the period of the permit validity. The Specific Convention confers to the holder the exclusive right to carry out research works within the perimeter indicated in the research permit, as well as the exclusive right to obtain a concession following the carrying out of the works.

The Tunisian Law allows the holder of the research permit to renounce the permit at any moment during the permit validity period. Just as the holder has the right to renounce the research permit, the granting authority also has the right to cancel the research permit in cases where the holder: a) does not meet the financial and technical capacity required for granting the permit; b) has purposely delivered false information or inaccurate data in order to be granted the research permit; c) has failed to carry out its obligations relating to the research programme on the perimeter applied for; d) has not conformed to the provisions of arts. 31, 34 and 61 of the Hydrocarbons Code; e) has refused to take over the responsibilities of
the rights and duties of one or several of the permit co-holders who have withdrawn without yielding the said rights and duties under the terms provided for in the Hydrocarbons Code; f) refuses to communicate information in conformity with arts. 63-64 of the Hydrocarbons Code, as completed and defined by the Specific Convention; g) refuses to conform to the measures which have been prescribed by the head of the hydrocarbons services (arts. 133-134 of the Hydrocarbons Code).

In order to meet the domestic hydrocarbon consumption needs in Tunisia, the granting authority has the right to buy, in priority, a portion of the liquid hydrocarbon production extracted by the holder, or any other third party acting on his behalf in the Tunisian territory. Deliveries carried out for the benefit of the conceding authority are considered domestic sales and paid in Tunisian dinars, without prejudice to the holder’s right to transfer the surplus quantity (as provided in art. 182 of the Hydrocarbons Code).

The authority is also empowered to pronounce the expiration, cancellation or renunciation of the permit without releasing the holder from its liabilities related to the exploitation. However, the Tunisian Hydrocarbons Law grants the holder a preferential right to carry on the exploitation in the same conditions which have led the authority to decide to accord the concession to third parties.

The holder is bound to carry out an impact environment survey in conformity with the legislation and regulations in force in Tunisia. This survey should be approved in advance, at each phase of the research and exploitation works. The holder should take all appropriate measures to protect the environment and respect the liabilities undertaken in the impact survey as approved by the competent authority.

When a research permit expires (for any reason), or in the event where the holder of an exploration permit decides to put an end to the exploitation activities in conformity with the provision of art. 118 of the Hydrocarbons Code, the holder of a research, prospecting and/or exploitation concession is bound to repair the surfaces returned and the abandoned exploitation works in such a way that no prejudice will affect third parties or the environment and the natural resources.

The hydrocarbons selling price to be taken into consideration for the calculation of the taxable profits is equal to: the normal selling price, as defined by the Specific Convention, for hydrocarbons to be exported; and the real selling price for hydrocarbons sold on the domestic market.

Moreover, the Specific Convention should contain the provisions under which the operating concession has been granted and notably: the rules that the licence-holder has to respect in order to allow the delimitation of the conceded perimeter; and the applicable procedures according to which the licence-holder is liable to continue exploration on the concession granted to it.

The Specific Convention should also determine the cases of termination of the concession.

It is to be reminded that the Specific Convention is signed, on the one hand, by the authority represented by the Minister in charge of Hydrocarbons and by the duly appointed representative of the research permit holder, on the other hand. However, in the case of a PSA, the Specific Convention is signed, on the one hand, by the Minister in charge of Hydrocarbons and by the titular state company and the undertaker represented by duly appointed persons on the other hand.

The Specific Convention is approved by Decree published in the Tunisian Republic’s Gazette.

The holder of the exploration permit can apply for its renewal, only if it has incurred totally the expenditures and the works schedule provided for in the Specific Convention.

If it has failed to do so, it may claim the renewal of the permit to explore only after having paid to the authority the amount representing the difference between the amount of minimum expenditures to be incurred or the amount necessary to the implementation of works as provided by the Specific Convention and the amount actually spent.

Pursuant to art. 30 of the Tunisian Code of Hydrocarbons, the role of the Minister in charge of Hydrocarbons is very important as to the exploration permit. Thus, the Minister in charge of Hydrocarbons, may extend the period of validity and/or the area of a valid research permit on advice of the Hydrocarbons Consultative Committee. The Minister is also endowed with the power to extend that renewal for one year. Moreover, he is entitled to authorize the holder to modify the programme of works to be carried out during the period of the exploration permit validity.

Following the advice of the Hydrocarbons Consultative Committee, the Minister in charge of Hydrocarbons lays down all these acts in a Decree to be published in the Tunisian Republic’s Gazette.

The legal nature of the licences of exploration and prospecting permits

These deeds are deemed to be movable and indivisible according to the provisions of art. 33 of the Hydrocarbons Code. Thus, the total or partial alienation of the rights and liabilities issuing from the exploration or prospecting permit is forbidden by the Hydrocarbons Code, except when specifically authorized by the authority.
The exploration and prospecting permits cannot be granted, partially or totally, other than to a company which fulfills all the criteria and conditions required by the permit, and this following the authorization by the Minister in charge of Hydrocarbons and conform advice of the Hydrocarbons Consultative Committee.

In the case of a transfer of a permit to an affiliated company, the granting authority should be notified. The latter might require from the assignor or from the parent company a covenant warranting the carrying into effect of the licensee’s liabilities, notably with regard to the implementation of the minimum works commitment. The transfer of the exploration or prospecting permits, under whatever form, should forcibly be subject to a transfer deed established between the assignor and the assignee.

In the case of a partial or total transfer of the permits of exploration or prospecting, the permit transferee should assume all the assignor’s covenants related to the said permit(s), and will benefit from all rights pertaining to the conceded surface, since the date of the transfer coming into effect.

The transfer is authorized by a decree of the Minister in charge of Hydrocarbons, which is published in the Tunisian Republic’s Gazette.

Should the holder of an exploration permit wish to reduce the surface it has been granted, it should notify the authority of its intention to proceed by clearly indicating the elementary perimeters which it intends to abandon. In this case, the Hydrocarbons Code provides that surfaces to be kept, for each renewal, are not reduced due to the deliberate reduction of the perimeter of exploration. Thus, minimum works and expenditures incurred do not undergo any modification in the course of each period of validity.

Moreover, the holder is authorized to operate modifications related to the duration/validity of the exploration permit having the right to proceed freely to the reduction of the relevant area, provided that it will notify such reduction to the authority and will respect the minimum works and expenditures to be incurred. The surface and the remaining period of the permit validity are fixed by decree of the Minister in charge of Hydrocarbons.

The holder of the exploration permit may, at any time, deliver a written statement of renunciation, provided that it has fulfilled its obligations with regard to the minimum works and expenditures during the period of validity of the permit. This not being the case, the holder may renounce the exploration permit if it pays a compensation allowance equal to the difference between the minimum amount of works and expenditures to be carried out during the exploration period and the amount which the holder had undertaken to invest.

The exploration permit may be subject to cancellation by the Minister in charge of Hydrocarbons, after formal notice addressed to the holder. This can occur in the instances where the holder: a) does not fulfill the terms of the financial and technical means required during the exploration permit period; b) has deliberately provided false information in order to obtain the exploration permit; c) does not fulfill the requirements relating to the minimum works and expenditures he has subscribed to; d) has not conformed to the liabilities regarding the starting-up of the works, the concession of the exploration permit and the surface repairing; e) as refused to take over, at its own expenses, the rights and liabilities of one or more co-holder of the exploration permit withdrawn without yielding the rights and liabilities provided for by the Hydrocarbons Code; f) refuses to communicate information of geological, geophysical, hydrological, drilling and exploitation nature in his possession as a quarterly and an annual report relating to the activities and expenditures carried out within the framework of the budgets and programmes communicated in advance to the authority; g) refuses to conform to the procedures set by the hydrocarbons Heads of Divisions.

In the case of the exploration permit being subject to cancellation, the permit holder must pay the authority a compensating allowance similar to that pertaining to the renunciation of the exploration permit.

After expiration, cancellation or renunciation to the exploration permit, the holder cannot claim to recover, directly or indirectly, rights over the perimeters concerned by the permit until the expiry of a period of three years, starting from the expiration, cancellation or renunciation date. This period can be reduced to six months by the Minister in charge of Hydrocarbons, on request of the holder, and subject to the confirmed opinion of the Hydrocarbons Consultative Committee.

The exploitation concession

The exploitation concession is granted to the holder who, during the validity period of his permit of exploration discovers an economically exploitable hydrocarbons oilfield within his perimeter.

In conformity with the provisions of the Specific Convention, a company possessing the necessary technical and financial means may be authorized by the Tunisian state to operate a returned, abandoned or forfeited concession of exploitation, in conformity with the terms already defined by the Specific Convention.

Moreover, the Tunisian state is entitled to grant, within the same framework, and according to the provisions defined in advance, an exploitation
concession relating to a discovery situated outside a zone covered by a permit of exploration, prospecting or a concession of exploitation to any company owning the financial and technical capacities necessary to the exploitation.

When the exploration or prospecting works result in the discovery of a potentially exploitable perimeter, and the holder has presented conclusive production tests to the authority, the same is bound – prior to any application for a concession of exploitation – to carry out an appraisal programme during a period which does not exceed three years as to liquid hydrocarbon discoveries and four years as to gaseous hydrocarbon discoveries. These periods start from the date, notified to the Minister in charge of Hydrocarbons on which the discovery is considered as being potentially exploitable.

At the end of the appraisal works, and in case the discovery is held to be economically exploitable by the permit holder, the latter will have the right to be granted a concession of exploitation relating to the discovered oilfield.

Moreover, when the holder proves that the discovery is not economically exploitable on its own, its regrouping with other discoveries situated in one or several permits of the same holder may be authorized by the authority. The authority may authorize, for the same reasons, the regrouping of discoveries situated on permits granted to different holders.

The holder’s application for a concession of exploitation cannot but concern a perimeter constituted by a whole number of elementary perimeters, which are all in one block, containing the discovery and situated wholly within the perimeter to which the concession belongs. However, an application for a concession of exploitation is receivable when its perimeter is delimited by an international frontier and, therefore, by portions of elementary perimeters.

At the risk of being declared void, the application for a concession of exploitation introduced by the permit holder should comprise: a) a covenant to develop the hydrocarbons field covered by the perimeter applied for; b) a development programme containing a geological and geophysical study of the oilfield with an estimate of the existing reserves and the proved recoverable reserves; c) a study comprising the production methods considered and the expected production profile; d) an exhaustive study concerning the installations necessary for hydrocarbons production, processing, transport and stocking; e) an economic study with a detailed estimate of development and exploitation costs setting out the economic value of the discovery; f) study on the staff needs including a training and recruitment programme of the local staff; g) a study of the valorization of the liquid hydrocarbons by-products and notably dissolved or associated gas, Liquefied Petroleum Gas (LPG) and condensates; h) study of security measures to be taken for the staff, the protection of installations and the population and environment protection, as well as the plan for the carrying out of development works.

The concession of exploitation is granted by decree of the Minister in charge of Hydrocarbons for a period of thirty years starting from the date of its publication in the Tunisian Republic’s Gazette.

The holder of the concession of exploitation enjoys the exclusive right to undertake exploitation activities within the surface of the perimeter of the concession. Moreover, it is authorized to carry out exploration activities of geological horizons other than those which have given the right to the concession of exploitation, such as appraisal works carried out in order to check the extension of an oilfield before or after its production start-up.

The exploitation concession holder shall freely dispose of the hydrocarbons extracted; notably those for export. It is subject to the payment of a royalty proportional to the quantities of hydrocarbons produced, in cash or in kind, according to the authority’s choice and to the terms provided for by the Specific Convention. The proportional royalty rate is determined according to the net accrued income share of each co-holder and related to each exploitation concession.

Moreover, the holder is bound to contribute to the supply of the Tunisian market in order to meet the needs of the domestic consumption. In this case, the authority has the right (with priority) to buy part of the liquid hydrocarbons production extracted by the concession holder. The amount destined to the Tunisian market, to be bought by the authority, is calculated as being 20% of the production from each concession.

In the event of the authority exerting its priority right of buying the concession holder’s production, the latter is bound to assure the deliveries in question according to the terms set by the notification and the modalities defined by the Specific Convention. This sale is carried out in Tunisian dinars, without prejudice of the holder’s rights to transfer abroad the surplus after its local needs have been met.

It should be noted that a concession of exploitation granted in conformity with the provisions of art. 53 of the Hydrocarbons Code, is considered movable and indivisible. Thus, partial or total transfer of the rights held by either of the co-holders of an exploitation concession is forbidden, except by preliminary authorization from the authority.
Total or partial transfer of the exploitation concession can be carried out subject to the preliminary authorization of the Minister in charge of Hydrocarbons on corresponding advice from the Hydrocarbons Consultative Committee. The affiliated companies are exempted from this authorization, but they are subject to an advance notification of the transfer to the authority.

In the event of a transfer made subject to the authority permission, the state company Entreprise Tunisienne d’Activités Pétrolières (ETAP) will benefit from the pre-emptive right to acquire the interest, which is the object of the transfer. In this case, the state company should (under penalty of preclusion) notify the transferer of its decision to exert or not to exert this right, within a period of thirty days following the filing of the application of transfer by the holder.

In the case of the exploitation concession being granted to several holders, the withdrawal of one or several among them does not involve the cancellation of the exploitation concession.

The exploitation concession holder can, at any time, reduce its area and notify its decision to abandon the concerned elementary perimeters to the authority. It can also give up the exploitation concession in its entirety.

In the case of expiration, renunciation or cancellation of an exploitation concession, the latter returns to the granting authority, without discharging the holder from its obligations. However, at the expiration of the exploitation concession, the holder will benefit from the preferential right to carry on the exploitation according to the provisions and conditions similar to those the authority would grant to third parties.

Production sharing contract

The Tunisian state company can, within the framework of its hydrocarbons prospecting, research and exploitation activities, conclude service contracts provided for in art. 97 of the Hydrocarbons Code under the name of contracts of production sharing.

However, the state company has to obtain the approval of the authority as to the appropriate time to conclude a contract of production sharing. The same procedure will be applied regarding the approval of any modification of the contract of production sharing.

In order for a production sharing contract to be concluded between the Tunisian state company and a private company (the “undertaker”), the same will have to be concluded on the basis of the following principles: a) the research permit as well as the exploitation concessions be granted to the state company; b) the state company, in its capacity of holder, concludes a production sharing contract with an undertaker having proved evidence that it owns the financial resources and technical experience necessary to carry out research and exploitation activities; c) the undertaker finances, at its own risk, the totality of the research and exploitation activities for the account and under the control of the state company; d) in the case of hydrocarbons production, the state company delivers to the undertaker a certain quantity of that production within the limit of a ratio fixed in the production sharing contract, in order for the undertaker to recover the expenditure it has carried out within the framework of the contract; e) the state company delivers to the undertaker, besides this, as remuneration, a percentage of the remaining production as agreed in the production sharing contract.

State contribution

ETAP is the national petroleum company in Tunisia through which the Tunisian state contributes to the exploitation of hydrocarbon resources.

ETAP plays a determining role in the exploitation of hydrocarbons in Tunisia. When filing an application, any request for a permit of hydrocarbon exploration in Tunisia must offer to ETAP an option to participate in any exploitation concession ensuing from such permit.

As to the exploration permit, this cannot be granted to the applicant company except in the case of a partnership with ETAP. The partnership quota of the latter is determined between the parties in the Specific Convention. However, the prospecting and exploration works are at the exclusive expense of ETAP’s partner.

ETAP’s participation can be carried out in the form of ETAP participation in the capital of a Tunisian joint-stock company with its head-office in Tunisia, or in any other possible form of participation. The deeds related to ETAP’s participation as well as the procedure and the conditions of its application are submitted to the prior approval of the authority, under penalty of cancellation. The said deeds are provided for in art. 93 of the Hydrocarbons Code as ‘particular agreements’. The particular agreements are approved by decision of the Minister in charge of Hydrocarbons.

In the event of an exploration concession, ETAP has the right to opt for participation in a percentage decided by itself, if this is within the limit of the rate agreed upon in the specific contract. The option of participation must be exercised by ETAP within six months of filing the exploitation concession application, or at any time agreed upon by the parties in the specific contract.

Expenditures for exploration and/or prospecting and appraisal carried out under an exploitation...
concession in which ETAP has exercised the option of participation are borne by its partners. In addition, in the event of ETAP participating in the complementary development of the exploitation concession, it will reimburse its share of the expenditures already incurred, in conformity with the specific contract. The reimbursement of ETAP’s share in the aforementioned expenditures is made by the exchange-value of a percentage of its production quota, in conformity with the provisions defined in the specific contract.

Moreover, when the state company carries out prospecting research and/or exploitation hydrocarbon activities, whether for its own account, in partnership, or otherwise, it benefits from all rights and submits itself to all the covenants provided for by the Hydrocarbons Code and the regulatory texts issued in implementation thereof.

The fiscal structure

The fiscal system applicable to the holder of a permit or a concession covers rates, duties and taxes of general application and rates, duties and taxes relating specifically to hydrocarbons.

The holder of a research, prospecting or exploitation concession, as well as the subcontractors to whom he had recourse during the carrying out of the hydrocarbons research, prospecting or exploitation concession works in Tunisia, are subject to: the provisions of the specific concession; the provisions of the specific production sharing contracts; the provisions of the contracts of supplies, works and services related to the whole of the holder’s activities carried out within the framework of the specific concession or production sharing contract, and relating to the hydrocarbons research and exploitation activities.

The following are also applied:

• Payments to the Tunisian state, local authorities, public or private companies and public services licence-holders, in remuneration of the holder’s direct or indirect use of various roadway systems, networks and other components of the public or private domain, in accordance with the conditions of use defined in the specific contract.

• Taxes on the establishments of industrial, commercial or professional status for the benefit of local communities.

• Taxes on constructed buildings.

• Duties and taxes paid on supplies of services, goods, equipments, materials, products and raw materials or consumables comprised in the buying price, except for the added value tax.

• Taxes on transport and exploitation vehicles, and the single tax on insurances.

In addition to duties, taxes and rates of general application, the holder shall pay taxes, duties and rates specific to hydrocarbons and to his research, prospecting and exploitation hydrocarbons activities in Tunisia. In this context, the holder is subject to the following payments:

• A fixed tax per hectare of land included in the exploitation concession equal to as many times the minimum hourly inter-professional warranted salary of an unskilled workman, as the perimeter comprises entire elementary perimeters; and anytime the holder of the contract applies for the institution, renewal or extension of hydrocarbons title-deeds areas, except for the prospecting authorization.

• A fixed tax per hectare of land included in the exploitation concession equal to as many times the minimum hourly inter-professional warranted salary of an unskilled workman per hectare for the inactive or unexploited concessions.

• With regard to the exploitation concession, the holder should provide, at the latest by 31 March of every year for the previous year, an annual statement containing all the information on hydrocarbons production and sales as well as the exploitation expenditures. Any delay in payment involves the application of delay penalties applicable in terms of income-tax and corporate taxes. A royalty proportional to the quantities of hydrocarbons produced by the holder is applied to the exploitation concession. The proportional duty can be paid in cash or in kind according the authority’s choice, and in conformity with the provisions of the specific contract. The annual production taken into account for the determination of the proportional duty does not include the quantities of consumed hydrocarbons for the exploitation needs or injected into the oilfield. The measurement procedures of the said quantities are defined by the specific contract.

As stated previously, the proportional duty is determined according to the Ratio (R) of the net income, accrued to the total accrued expenditures of each co-holder and respectively related to each exploitation concession and to the research permit from which the same was issued. The rate of the proportional duty is variable according to the Ratio (R) as previously defined (Table 5).
In cases where ETAP does not participate in a given exploitation concession, the rate of the proportional duty applicable to that concession cannot be inferior to 10% for liquid hydrocarbons and to 8% for gaseous hydrocarbons.

The holder should pay a tax on profits at a variable rate according to the Ratio (R) previously determined (Table 6).

In the event of ETAP participating in a given exploitation concession at a rate equal or superior to 40%, the tax rate on profits coming from the said concession is fixed to 50%.

The payment of the profit tax excludes, in conformity with the provisions of art. 103.5 of the Hydrocarbons Code, the payment, for that purpose, of any due advance under the terms of the legislation in force in matter of income-tax of individuals and corporate tax, excepting deductions at the source relating to the said taxes which constitute advances on the quarterly payments or on the final tax.

In the case of a contract of production sharing, the Tunisian legislator has instituted a production sharing fiscal system.

Tax related to production sharing contract is defined in proportion to the production share due to ETAP, after deduction of the quantities delivered to the Undertaker as a recovery of its expenditures and as its remuneration relating to the given fiscal year. The undertaker is supposed to have paid the profit tax.

The said tax is fixed – as oil and gas relating to the concerned fiscal year – for each fiscal year on the value of the production quantities drawn by the undertaker. The production will be valued according to the selling price provided for in the specific contract or at the actual selling price of hydrocarbons sold on the domestic market.

The holder is in any case subject to the duties and taxes pertaining to its activity.

Loan interests related to the expenditures of the initial development and to the complementary development investment of a given exploitation concession, and for an amount equivalent to 70% of the said expenditures amount will be recovered by the undertaker within the limit of the rates applicable to the exploitation concession.

Research expenditures carried out on an exploitation concession will be recovered by the undertaker by way of quantities of oil or gas recovery within the limit of the rates applicable to the exploitation concession.

Profits resulting from the production, stocking and transport of hydrocarbons for the exclusive account of the holders are submitted to the fiscal system of general application.

**Liability reserve**

The holder of an exploitation concession has to constitute a liability reserve for repairing the exploitation site in the event of its withdrawal.

This liability reserve should be established by the holder in the course of the last five fiscal years for an offshore site, and in the course of the last three fiscal years for a land site. However, the holder can be allowed by the authority to constitute the liability reserve for repairing the exploitation site over a longer period during the last years of the concession.

The holder can be discharged from the obligation of repairing the site in the event of its withdrawal from exploitation for reasons of renunciation of the

### Table 5. Rate of proportional duty according to the Ratio (R)

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<tr>
<th>FOR LIQUID HYDROCARBONS:</th>
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<tbody>
<tr>
<td>R inferior or equal to 0.5: 2%</td>
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<tr>
<td>R superior to 0.5 and inferior or equal to 0.8: 5%</td>
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<tr>
<td>R superior to 0.8 and inferior or equal to 1.1: 7%</td>
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<tr>
<td>R superior to 1.1 and inferior or equal to 1.5: 10%</td>
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<tr>
<td>R superior to 1.5 and inferior or equal to 2.0: 12%</td>
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<td>R superior to 2.0 and inferior or equal to 2.5: 14%</td>
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<td>R superior to 2.5: 15%</td>
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<th>FOR GASEOUS HYDROCARBONS:</th>
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<td>R inferior or equal to 0.5: 2%</td>
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<tr>
<td>R superior to 0.5 and inferior or equal to 0.8: 4%</td>
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<tr>
<td>R superior to 0.8 and inferior or equal to 1.1: 6%</td>
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<tr>
<td>R superior to 1.1 and inferior or equal to 1.5: 8%</td>
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<tr>
<td>R superior to 1.5 and inferior or equal to 2.0: 9%</td>
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<td>R superior to 2.0 and inferior or equal to 2.5: 10%</td>
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<td>R superior to 2.5 and inferior or equal to 3.0: 11%</td>
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<td>R superior to 3.0 and inferior or equal to 3.5: 13%</td>
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<td>R superior to 3.5: 15%</td>
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### Table 6. Tax on profits according to the Ratio (R)

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<tr>
<th>FOR LIQUID HYDROCARBONS:</th>
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<tr>
<td>R inferior or equal to 1.5: 50%</td>
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<tr>
<td>R superior to 1.5 and inferior or equal to 2.0: 55%</td>
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<td>R superior to 2.0 and inferior or equal to 2.5: 60%</td>
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<td>R superior to 2.5 and inferior or equal to 3.0: 65%</td>
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<td>R superior to 3.0 and inferior or equal to 3.5: 70%</td>
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<td>R superior to 3.5: 75%</td>
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<th>FOR GASEOUS HYDROCARBONS:</th>
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<tr>
<td>R inferior or equal to 2.5: 50%</td>
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<td>R superior to 2.5 and inferior or equal to 3.0: 55%</td>
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<td>R superior to 3.0 and inferior or equal to 3.5: 60%</td>
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<td>R superior to 3.5: 65%</td>
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exploitation concession or termination at the concession expiry date, on condition that the duration of the still remaining exploitation concession – economically profitable – is for a minimum of five years for an offshore and three years for a land exploitation. This, provided that the carrying on of the exploitation of the oilfield during the residual period will cover the whole costs, including fees for repairing the site and securing a reasonable profit.

In the opposite case, in the event of the conditions previously mentioned not being met, the authority can require from the holder (at the latter’s choice) either to contribute to the repairing of the site or to carry on the oilfield exploitation.

At any moment, the authority is entitled to request a warranty from the holder covering the abandonment and repairing of the exploitation site. In no case does the said warranty release the holder from its liabilities related to the abandonment and repairing of the exploitation site.

Legislation in matters of exchange

The holders of hydrocarbon claims or the undertakers can be either resident or non-resident corporate bodies in Tunisia.

The holder or the undertaker operating within the framework of Tunisian rules of general application, whose registered capital is held by Tunisian or foreign non-residents and constituted by imported convertible currencies superior or equal to 66% of the registered capital, is considered as being a non-resident.

Any participation of residents in the registered capital of the non-resident holder’s or undertaker’s company should be carried out within the strict respect of the exchange regulations in force in Tunisia.

Additionally, companies registered in Tunisia in the form of corporate bodies having their head-office abroad, are considered as non-residents with regard to the exchange regulations. Therefore, the endowment of these companies’ offices in Tunisia should be subject to a financing by convertible currencies imported to Tunisia.

The holder or the undertaker non-resident in Tunisia is liable to conform to the Tunisian regulations in matter of exchange as well as to the specific contract and the provisions provided for by the Hydrocarbons Code.

As to the residents, the Tunisian Code on Hydrocarbons provides that, during the exploitation phase, the holder or the undertaker is allowed to keep abroad the yield of the exported hydrocarbons but remains liable to repatriate monthly to Tunisia an amount equal to that due to the Tunisian state for taxes, fees and expenses if it does not own the necessary resources in Tunisia.

Moreover, the non-resident holder or undertaker is permitted to use freely, in Tunisian dinars, the yield of its extracted gas sales during a concession exploitation for the supply of the domestic gas market, and this for its expenditures under the exploitation concession.

In order to allow the non-resident holders and undertakers to benefit freely from their income (in Tunisian dinars) of the gas supplied to the domestic market, the intermediary banks are allowed to carry out, without any restriction, any transfer pertaining to the expenditures incurred in foreign currency within the framework of the exploitation concession.

Holders and undertakers which are residents are also allowed to freely carry out currency transfers related to prospecting, research and exploitation activities in conformity with the exchange system annexed to the specific contract.

Disputes settlement and applicable law

Litigation resulting from the implementation of the different permits and licences granted by the Tunisian authorities are settled through arbitration procedures by third parties who will determine, as provided in the specific contract, the arbitration procedures and the terms for implementing the settlement through arbitration.

The Hydrocarbons Code provides that the different permits, licences and titles are governed by the provisions of the same code and that rights, duties and obligations mentioned therein are also governed by the Hydrocarbons Code. Moreover, Tunisia has issued a ‘convention-type’ which conforms with the provisions of the Hydrocarbons Code and which has been approved by decree.

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