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Malawi

ENERGY - OIL & GAS

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This country-specific Q&A provides an overview of energy - oil & gas laws and regulations applicable in Malawi.

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MALAWI

ENERGY - OIL & GAS



1. Does your jurisdiction have an established upstream oil and gas industry? What are the current production levels and what are the oil and gas reserve levels?

Malawi has a developing upstream oil and gas industry with a legal regulatory framework for the administration of exploration and production licenses in the sector. Between 2011 and 2013, prospecting companies were granted exploration licenses for six blocks where oil could be extracted and, in some blocks, production-sharing agreements were executed. The companies include RAKGAS Limited, Sacoil, Pacific Oil, and HAMRA Oil Holdings Limited among others. The country has oil prospects that exist in the Lake Malawi basins and Lower Shire. Notwithstanding, most oil and gas products are imported into Malawi such as petroleum. However, 10 years down the line, Malawi is yet to confirm if it can produce oil and gas now with 3 of the six oil companies relinquishing their prospecting licences for various reasons such as coronavirus effects among others. However, Malawi remains a destination for oil and gas investors to conduct their exploration activities and determine if they are economically viable for their investments. There are no production and reserve levels for oil as Malawi is still in the prospecting and exploration stages of the industry.

2. How are rights to explore and exploit oil and gas resources granted? Please provide a brief overview of the structure of the regulatory regime for upstream oil and gas. Is the regime the same for both onshore and offshore?

The Liquid Fuels and Gas (Production and Supply) Act provides the legal regulatory framework for the production, extraction, conversion, importation, blending, transportation, storage, distribution, wholesale and retail sale of liquid fuels and gas within Malawi, and where natural gas is used as boiler fuel, feedstock or for other commercial purposes in Malawi. The Malawi

Energy Regulatory Authority ('MERA') is the responsible Authority. Any person who wishes to carry on the business of producing or refining crude oil, gas, biofuel, or any other liquid fuel in Malawi is required to apply to MERA for a Production License. The Application should be supported by a business plan, investment plan, the applicant's certificate of incorporation or any instrument of registration under the Laws of Malawi, Memorandum and Articles of Association or any other authorized instrument recognized by the Laws of Malawi, past experience in liquid fuel and gas, proof of acquisition of land, a valid certificate of compliance with the Occupational Safety, Health, and Welfare Act and a certificate of compliance with the Environment Management Act among others. The requirement for a license also applies to Importation, Transportation, Storage, Wholesale, and Retail. Applications for the said licenses are made in a prescribed form and filed with MERA. MERA shall after due evaluation of an application, issue a license in the prescribed form, and may establish special terms and conditions. The fees payable for the Licenses are as follows: Crude oil production license: MWK0.30 per litre; Crude oil refining license: MWK0.20 per litre; Production of biofuel: MWK0.15 per litre; Importation license for liquid fuel and gas: MWK2, 000, 000. 00; Importation license for lubricants: MWK1, 000, 000. 00.

A license is valid for a period of one to five years depending on the type of activity the license covers and is renewable in accordance with conditions prescribed in regulations. A license can be assigned or transferred subject to written approval by MERA.

In the upstream industry, the Act provides that the activities and installations related to the prospecting, exploration, discovery, and development of oil and gas within Malawi as well as the storage, transportation, and transformation of such oil and gas within the limits of the development area shall be governed by the Petroleum (Exploration and Production) Act. The Petroleum (Exploration and Production) Act mainly deals with the exploration and production of petroleum within Malawi. Under this Act, the Ministry of Energy and Mining is the

Government Authority responsible. The Petroleum Regulations allow the Minister to grant exploration licenses following the submission of applications by individuals or companies in respect of any geographical area in Malawi divided into blocks. A petroleum exploration license will not be granted in respect of a block that has already been granted to another licensee. There are no prescribed forms for the applications. The fees payable for the License are as follows: Application for grant of petroleum exploration licence-MWK250,000.00. Application for renewal of petroleum exploration licence-MWK500,000.00.

No license is granted to an individual unless he is a citizen of Malawi or has been a resident in Malawi for a period of four years immediately preceding the date of the application for a License. A petroleum exploration license shall be granted to a body corporate if it is incorporated or established in Malawi; or approved by the Minister if it is not incorporated in Malawi. There is no prescribed timeframe within which a Minister would grant the application for a License or renewal of a License.

3. What are the key features of the licence/production sharing contract/concession/other pursuant to which oil and gas companies undertake oil and gas exploration and exploitation?

The key features of a Petroleum Exploration License are as follows. This is a license granted to qualified applicants to carry out petroleum exploration operations on a non-exclusive basis. A licensee has the exclusive right to explore petroleum and to carry on such operations and execute such works as are necessary for that purpose, in the exploration area. An exploration license is valid for a term stipulated in the license. Ordinarily, the term does not exceed 4 years and it is renewable or can be extended. The term may if the Minister considers it proper, be preceded by a preparation period not exceeding 1 year. A petroleum exploration license states the date of the grant of the license. It identifies the block or blocks to which the license relates. It states the conditions on which the license is granted. There may be included in a petroleum exploration license provision of an option to acquire on stipulated terms, or on terms to be agreed, an interest in any venture for the production of petroleum which may be carried on in any block or blocks to which the license relates when granted. Conditions vary. Six prospecting licences were signed between September 2011 and July 2013 with SacOil Holdings Limited (South Africa), Surestream Petroleum Limited (United Kingdom), Surestream Petroleum Limited (United Kingdom), RAK

Gas MB45 Limited (Cayman Islands), RAK Gas MB45 Limited (Cayman Islands), Pacific Oil Limited (British Virgin Islands). In some cases, Prospecting Licenses were accompanied by Production Sharing Agreements. On the other hand, in the acquisition of its Prospecting Licence, HAMRA Oil Holdings Limited was given conditions such as conducting an extensive Environmental Impact Assessment, acquiring a full Tensor Gravity Survey, purchasing aeromagnetic survey data, and reprocessing the existing seismic data among others.

4. Are there any unconventional hydrocarbon resources (such as shale gas) being exploited and is there a separate regulatory regime for unconventional?

There is currently no exploitation of unconventional hydrocarbon resources in Malawi. Further, there is no separate regulatory regime framework for unconventional other than the framework outlined in the Liquid Fuels and Gas (Production and Supply) Act and the Petroleum (Exploration and Production) Act and subsidiary legislation.

5. Who are the key regulators for the upstream oil and gas industry?

The Malawian oil and gas industry is generally regulated by the Malawi Energy Regulatory Authority which is established under Section 3 of the Energy Regulation Act and the Ministry of Energy.

6. Is the government directly involved in the upstream oil and gas industry? Is there a government-owned oil and gas company?

The Government, through the Malawi Energy Regulatory Authority largely plays a supervisory role in the regulation of the Malawian oil and gas industry.

There is the National Oil Company Limited [NOCMA] which was incorporated in 2010 as a public company. The company is wholly owned by Government and is primarily mandated to manage the country's Strategic Fuel Reserve Facilities [SFRs].

7. Are there any special requirements for or restrictions on participation in the upstream oil and gas industry by foreign oil and gas companies?

There aren't any such requirements. In fact, under

Section 6 (1) of the Liquid Fuels and Gas (Production and Supply) Act, it is provided that all the activities in the oil and gas chain of supply are open to foreign and domestic persons.

However, Section 6 (2) of the Act provides that where a foreign company is granted a wholesale license, it shall only own and run a maximum of two retail outlets and shall franchise out the rest of its retail outlets to Malawians.

8. What are the key features of the environmental and health and safety regime that applies to upstream oil and gas activities?

There is an Environment Management Act which 2017 which stipulates under Section 31 of the Act as read together with Section 33 (1) of the Liquid Fuels and Gas (Production and Supply) Act that before the execution of any environmental-related projects and before issuance of permit or license to carry out or undertake the such project, there has to be carried an Environmental and Social Impact Assessment exercise.

Additionally, under Section 33(1) of the Act, the Malawi Environment Protection Authority has the power to periodically monitor the operations of any project, industry, or operation, in order to determine the long-term effects of such activities on the environment.

9. How does the government derive value from oil and gas resources (royalties/production sharing/taxes)? Are there any special tax deductions or incentives offered?

The Government through the Malawi Energy Regulatory Authority charges levy in terms of Section 24 of the Act on all energy sales which is paid by the holders of energy licenses and further tax and levy on all persons involved in the importation, storage, wholesaling and retailing of liquid fuels and gas, in accordance with Section 36 of the Liquid Fuels and Gas (Production and Supply) Act.

There are generally no special tax deductions or incentives under the current Malawian energy regime.

10. Are there any restrictions on export, local content obligations or domestic supply obligations?

In terms of Section 17 of the Liquid Fuels and Gas (Production and Supply) Act, the importation, wholesaling, storage, and retailing of liquid fuels and gas in the chain of supply, have to be specifically authorised and licensed by the Malawi Energy Regulatory Authority.

There are no provisions for restrictions on the exporting of liquid fuels and gas because Malawi generally imports the same from other jurisdictions.

11. Does the regulatory regime include any specific decommissioning obligations?

Yes. Under Section 32 (3) of the Liquid Fuels and Gas (Production and Supply) Act, the Malawi Energy Regulatory Authority has the power to require a licensee who abandons or completes the work on the project site to restore the such site to acceptable environmental standards.

12. What is the regulatory regime that applies to the construction and operation of offshore and onshore oil and gas pipelines?

A (natural/legal) person seeking to construct and operate an offshore oil and gas pipeline has to apply for a licence from the Malawi Energy Regulatory Authority pursuant to Section 18 (1) of the Liquid Fuels and Gas (Production and Supply) Act.

The Authority has the power to grant such a person a license where it is satisfied that such an application meets inter alia, the applicable environmental assessment conditions.

13. What is the regulatory regime that applies to LNG liquefaction and LNG receiving terminals? Are there any such terminals in your jurisdiction?

No specific regime applies to LNG liquefaction and LNG receiving terminals. We do not have any such terminals that exist in Malawi at the moment. However, the governments of Mozambique and Malawi are currently studying the possibility of building a gas pipeline linking the Rovuma reserves off Cabo Delgado to Malawi.

14. What is the regulatory regime that applies to gas storage (not LNG)? Are there any gas storage facilities in your

jurisdiction?

The storage of gas in Malawi is regulated by the Liquid Fuels and Gas (Production and Supply) Act. Under Section 17 (c) of the Act, a person seeking to set up gas storage in the jurisdiction has to apply for a license from the Malawi Energy Regulatory Authority.

15. Is there a gas transmission and distribution system in your jurisdiction? How is gas distribution and transmission infrastructure owned and regulated? Is there a third party access regime?

We do not have a gas transmission and distribution system in Malawi and there is no existing regime providing for gas distribution, transmission, and access of gas over and over and above the general provisions of the Liquid Fuels and Gas (Production and Supply) Act.

16. Is there a competitive and privatised downstream gas market or is gas supplied to end-customers by one or more incumbent/government-owned suppliers? Can customers choose their supplier?

There is a competitive and privatised downstream gas market and customers can choose their supplier. The biggest supplier is Afrox Malawi Limited.

17. How is the downstream gas market regulated?

The downstream gas market is regulated by The Malawian oil and gas industry is generally regulated by the Malawi Energy Regulatory Authority which is established under Section 3 of the Energy Regulation Act. The Liquid Fuels and Gas (Production and Supply) Act is the main piece of legislation regulating the downstream gas market.

18. Have there been any significant recent changes in government policy and regulation in relation to the oil and gas industry?

There are no significant changes in government policy and regulation so far. However, the Petroleum Act is currently under review and a Petroleum Policy and a model Product Sharing Agreement are currently being formulated.

19. What key challenges have been identified by the government and/or industry in relation to your jurisdiction's oil and gas industry? In this context, has the Covid-19 pandemic had an impact on the oil and gas industry and if so, how has the government and/or industry responded to it?

Since the Malawian oil and gas industry is undeveloped and has not gone beyond the exploration stage, the biggest challenge is the lack of the technical expertise necessary to run a successful oil and gas industry.

20. Are there any policies or regulatory requirements relating to the oil and gas industry which reflect/implement the global trend towards the low-carbon energy transition? In particular, are there any (i) requirements for the oil and gas industry to reduce their carbon impact; and/or (ii) strategies or proposals relating to (a) the production of hydrogen; or (b) the development of carbon capture and storage facilities?

There are no policies or regulatory requirements relating to the oil and gas industry which reflect/implement the global trends towards the low-carbon energy transition.

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