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Extractive Industries and Sustainable Job Creation

The Legal and Regulatory Frame-Work for Petroleum Industry In Sudan

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Introduction

- Laws and legislations for petroleum industry in Sudan are ,generally, a frame work that leaves details and particular provisions to regulations and agreements with investors. So they enable awarding contracts, licenses or concessions as this presentation will show.

The legal frame-work and petroleum legislation

1. The Transitional Constitution of Sudan 2005 (as amended 2015). Provides for :

   - Best utilization and efficient management taking into consideration public and national interests and interest of affected areas and communities.

   - Petroleum operations without negative impact on environment.

   - Equitable and fair distribution of resources among various levels of government

2. The Petroleum Act of 1931

- It governed petroleum products (transport, storage, handling, ….etc),.
- Repealed by the Petroleum Wealth Act of 1998.

3. The laws that governed petroleum industry in Sudan before 1998 were the Petroleum Resources Act of 1972 and the Petroleum Resources Regulations of 1973.

- Contracts and agreements concluded under those laws were (concession contracts).

- This model does not enable State/Government to control and manage its petroleum resources to the best of its interest.

4. The Petroleum Resources (Amendment Act) 1975:

- Introduced Article 25 which allowed conclusion of Production Sharing Agreements.

- Under the 1975 Act, the Agreements prevail over the law in case of contradiction.

5. The Current Petroleum Wealth Act 1998, provides for:

- A frame work Act that leaves details to regulations.
- Ownership of Petroleum Resources by the State of Sudan.
- Establishment of The Sudanese Petroleum Corporation, the entity entrusted with management of petroleum resources.

- Definition of Petroleum Operations (upstream and downstream).
- Establishment of Petroleum Affairs Council with powers to issue regulations for implementing the Act, including financial, administrative, regulatory and environment protection…..etc.

6. The Presidential Decree No (32) for 2015:

- establishing the Ministry of Oil and Gas and specifying its functions among other national ministries and organs.

7. Other related national laws:

- such as labor, tax, investment and environment laws…..etc.

International Laws and Conventions

- Sudan is a party to many international and regional conventions and agreements, including environment, marine and coastal area protection.
- Petroleum Contracts and Agreements concluded by the Sudan Government shall not impose on the Government any obligation which conflicts with any obligation imposed on it by any convention or international agreement.
- Petroleum operating companies are obligated to follow international standards in conducting petroleum operations, application of technologies and environment protection.

Features of The Exploration and Production Sharing Agreement (EPSA) in Sudan

- Parties to the agreement are the Government and Contractor (consortium of investors including Sudapet Co. the national oil company).
- Contractor parties are jointly and severally responsible towards the Government for fulfillment of EPSA obligations.
- Specified minimum work program and budget.
- Commitment Periods for exploration totaling six years within agreement period of 25 years.

- Only fulfillment of work commitment relieves the Contractor of its obligation and not the expenditure.
- Payment of actual value of the remaining committed work program in case of relinquishment or withdrawal from the project.
- Division of oil into Cost oil /profit oil.
- Certain percentage of cost oil for recovery purposes (e.g. 40%)
- Profit oil (e.g. 60%) to be divided between Government and Contractor according to agreed splits.

- Recovery of cost by the Contractor is only from cost oil, and only for cost audited and approved by Government.
- Excess cost or expenditure to be carried forward to the next year.
- Generally, Excess Cost oil to be divided as profit between the Government and the Contractor.
- Sudapet share (as a carried interest), carried up to Commercial Production.
- Recovery of Sudapet carries through 100% of Sudapet's share of Cost Oil for recoverable cost and 50% of its Profit Oil for non-recoverable cost.

- Government assumes and pays on behalf of the Contractor, all taxes and this is taken into consideration when determining oil splits between Government and Contractor that increase in favor of the Government from increment with increase of production

- However, Contractor shall keep proper and complete tax files and books of accounts. And are subject to audit and inspection by Tax Authorities.

- Contractor shall keep proper books and accounts according to international accounting procedures & practices and all original documents shall be kept in Sudan subject to the Government's audit and inspection.

- The Contractor shall avail all necessary funds for petroleum operation at its own cost and risk.
- If no Commercial Productions, the Government does not bear any risk or cost or liability towards the Contractor.
- All Contractor's purchases of goods and services shall be through bidding.
- Priority shall be given to local supplier and locally manufactured materials, if they are competitive in quality and prices and time of delivery

- No tax exemptions for Contractor's import of materials if similar materials are locally produced.
- Contractor shall as of date Commercial Production make available health and education services to employees depending on number of employees on project site.
- All petroleum data and information, their analysis and interpretation are the property of the Government.

- Immovable property e.g. land and buildings shall be the property of the Government when purchased.

- Movable property shall become the property of the Government when its cost is recovered by the Contractor or upon termination of the agreement whichever is earlier.

- The Contractor shall submit a Bank Guarantee, of certain percentage of the value of the minimum work program and budget and valid at least for the duration of the first commitment period

- A Parent Company Guarantee is an undertaking and not a financial guarantee and generally not acceptable.

- The Contractor is to fulfill a sudanization plan (45% within two years of the effective date of the agreement, 60% within 5 years and 90% within 10 years).

- A Royalty payment up to 10% of the gross production of petroleum to the Government, is introduced since 2012.

- Natural Gas provisions including a “Holding Period”.
- Environment protection is catered for in the agreement and violation by Contractor in this regard, may lead to termination of the agreement by the Government.
- The EPSA agreement is governed by the laws of Sudan.
- Any dispute under the agreements is settled amicably, failing such it shall be settled by arbitration in accordance with the UNCITRAL Rules.

Other Related Agreements

1. COPA (Crude Oil Pipeline Agreement) between the Government and the contractor/ investor as an stand-alone project.

   - contractor shall recover cost and IRR from the tariff of transportation of crude from an intake point to an export or sale terminal.

2. COTA (Crude Oil Transportation Agreement) an agreement between the Transporter and the Shippers, the owners of the crude oil to be transported

3. JOA (Joint Operating Agreement) for upstream operations among Contractor parties.
4. JCOA (Joint Construction and Operation Agreement) between joint pipeline operating contractor parties.
5. Petroleum Services Contracts (drilling, cementing contracts ……etc) between operating companies and their subcontractors.
6. Refinery Agreements between the Government and investors.
7. Other

Guarantees and Concessions

Sudanese laws and petroleum agreements:

- guarantee investment protection against nationalization and confiscation.
- grant free transfer of funds and profits outside Sudan.
- grant land for investment in oil and gas projects on nominal fees such projects being considered as national strategic projects.
- Allow share of the investor of petroleum to be exported free of tax.
- others

Future Reform and Improvement

1. Considering other types of petroleum agreements and contracts, where suitable , for exploration and production.
2. Improvement of Government take under the agreements through cost optimization and efficiency.
3. Sudanization of oil industry by increasing local content and participation

Conclusion

- Petroleum agreements are flexible and negotiable.
- There are stabilization clauses in favor of investor in case of change or amendment of law.
- Investor may benefit from any favorable change in law.
- No discrimination against investors.
- Many guarantees and concessions for investors.


Thank You