



GETTING THE  
DEAL THROUGH 

# Oil Regulation 2017

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# Tanzania

Saidi Othman Yakubu and Timothy Kyepa  
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## General

### 1 Describe, in general terms, the key commercial aspects of the oil sector in your country.

Unlike the gas sector, oil is a budding sector in Tanzania. As such, exploration is still ongoing. The Tanzania Petroleum Development Corporation (TPDC) has reported that oil seeps have been noted at Tundaa on the west coast of Pemba Island, Wingayongo in the Rufigi basin, Msimbati near Mnazi bay in the Ruvuma basin and Lake Tanganyika. Additionally, TPDC has reported oil shows in the following blocks; Pemba 5, Mandawa 1, Mafia 1 and Mita Gama 1. Small amounts of oil have also been reported in the Songo Songo block.

Some of the companies involved in oil exploration in Tanzania include: Beach Petroleum Limited and Heritage Rukwa (T) Limited. Previously, Antrim Resources and Woodside Petroleum Limited were involved in oil exploration in Tanzania. However, they have since exited the market.

### 2 What percentage of your country's energy needs is covered, directly or indirectly, by oil as opposed to gas, electricity, nuclear or non-conventional sources? What percentage of the petroleum product needs of your country is supplied with domestic production? What are your country's energy demand and supply trends, especially as they affect crude oil usage?

Much of Tanzania's energy needs are provided by biomass. Biomass caters for between 90 and 92 per cent of the country's energy needs. Oil and related products contribute between 7 and 8 per cent. Electricity is said to contribute between 1 and 1.5 per cent, while coal and renewable resources contribute between 0.5 and 1 per cent. These estimates have been reported by various institutions including the Ministry of Energy and Minerals, the Africa Environment Information Network and the United States Energy Association.

Tanzania imports all its petroleum products. None of the petroleum product needs are supplied through domestic production. Although the gas sector has developed with gas production at Songo Songo and Mtwara, this is not the case for the oil and petroleum sector.

Tanzania operates a bulk purchase system regulated by the Petroleum (Bulk Procurement) Regulations 2013. This system is used to purchase petroleum products. Tanzania does not have a domestic refinery and does not import crude oil. Trends in the country's oil products demand are determined by consumption, especially in the transport and energy sector (independent power production).

### 3 Does your country have an overarching policy regarding oil-related activities or a general energy policy?

The country has a National Petroleum Policy, as well as a National Energy Policy (2015). The National Petroleum Policy (2014) is still a draft and hopefully a final version will be published soon. The policy provides a comprehensive framework to guide the management of the petroleum sector.

The Ministry of Energy and Minerals has noted that the National Energy Policy was formulated to unlock bottlenecks in the energy sector, improve performance and promote efficient use of energy resources. The National Energy Policy 2015 replaced the National Energy Policy 2003, which is credited with paving the way for the establishment of the Energy and Water Utilities Regulatory Authority (EWURA).

### 4 Is there an official, publicly available register for licences and licensees? Is there a register setting out oilfield ownership or operatorship, etc?

The Petroleum Act 2015 provides for the creation of the Petroleum Upstream Regulatory Authority (PURA). Under this law, PURA is the designated custodian of the register for all upstream petroleum agreements, licences, permit authorisations and any other changes in interests over existing petroleum agreements, permits and licences.

Requests for information from the register will attract a fee prescribed by law. However, the register is yet to be implemented and the fees have not been prescribed. As such, any requests for information on agreements, licences and permits should be sought through a formal letter to both PURA and TPDC. We are not aware of any fees that are charged for such requests for information.

### 5 Describe the general legal system in your country.

Tanzania has a common law system. Generally the rule of law is upheld and this has attracted business, since the country is regarded as the most stable country in the region. The World Bank governance indicators and the World Justice Project rule of law index provide favourable rule of law reports for Tanzania.

Generally, all contractual and property rights are enforceable through courts of law and alternative dispute resolution processes. Some mining companies have reported breach of contractual obligations by the government. However, such companies have the option of enforcing their rights through courts of law.

The Civil Procedure Code provides for the execution of decrees and orders arising from judgments and rulings. The process is transparent. The Reciprocal Enforcement of Foreign Judgments Act 2002 provides for the procedure to be followed in enforcing foreign judgments. This procedure is clearly spelt out. Pursuant to the Arbitration Act Cap 15, the High Court recognises and enforces foreign arbitral awards. The High Court enforces awards that do not offend public policy or the laws of Tanzania.

The anti-corruption and anti-bribery regime is provided in the Prevention and Combating of Corruption Act. This act provides for the creation of the Prevention and Combating of Corruption Bureau. The bureau is charged with preventing corruption in the public, parastatal and private sectors. The Public Leaders Code of Ethics Act provides a code of ethics for some public leaders and also establishes the ethics secretariat. The Economic and Organised Crime Control Act provides regulations to guide the prevention of economic crimes, such as money laundering.

## Regulation overview

### 6 Describe the key laws and regulations that make up the principal legal framework regulating oil activities.

The key laws regulating oil activities in Tanzania include:

- the Constitution of the United Republic of Tanzania; the Constitution provides that the territory of Tanzania includes the mainland, Zanzibar and all territorial waters. All oil activities that are undertaken in these areas are subject to regulation by the Tanzanian government;

- the Petroleum Act 2015 is another important piece of legislation. This act provides for the regulation of all upstream, midstream and downstream activities in the oil sector;
- the Energy and Water Utilities Regulatory Authority Act provides a framework for the regulation of all downstream activities in the oil sector; and
- other relevant regulations include the Income Tax Act, the Environment Management Act, the Fair Competition Act, the Land Act and the Village Land Act.

#### 7 Are there any legislative provisions that allow for expropriation of a licensee's interest and, if so, under what conditions?

There are provisions in the Petroleum Act 2015 that provide for the expropriation of a licensee's interest.

In cases where petroleum has been discovered during exploration, the owner of such a licence should apply for a development licence within two years. Failure to apply for the licence may lead to revocation of rights to the block and adjoining blocks where the discovery of petroleum was made.

Also, a licensee's interest may be expropriated where the licensee fails to pay fees and interest that ought to be paid under the licence. The language of the provision is general and appears to regulate default under the act. However, the subsequent provisions give context to the type of default envisaged by the provision.

Where the expropriation affects private property or rights, the government pays compensation in accordance with the regulations.

#### 8 Identify and describe the government regulatory and oversight bodies principally responsible for regulating oil exploration and production activities in your country.

The Ministry of Energy and Minerals regulates all petroleum activities in Tanzania. Previously all upstream and to some extent midstream activities were under the purview of the TPDC. All petroleum licensees were granted to TPDC and TPDC then issued sublicences to interested entities.

Under the Petroleum Act 2015, a new regulatory body has been created for the regulation of the upstream activities. PURA is now vested with powers to regulate upstream petroleum activities. The national oil company is maintained as a commercial participant in the oil sector in Tanzania.

The powers of EWURA have been expanded to include regulation of all midstream and downstream activities:

*EWURA shall have powers to*

- grant, refuse, renew, suspend and revoke licences to entities undertaking or seeking to undertake mid and downstream regulated activities; and*
- determine and enforce tariffs, rates, charges and fees payable by a licensee in respect of regulated activity.*

#### 9 What government body maintains oil production, export and import statistics?

There is currently no oil production and export in Tanzania. EWURA maintains statistics on oil product imports.

#### Natural resources

#### 10 Who holds title over oil reservoirs? To what extent are mineral rights on private and public lands involved? Is there a legal distinction between surface rights and subsurface mineral rights? At what stage does title to extracted oil transfer to the licensee, lessee or contractor?

Under the Petroleum Act 2015, all oil resources in the natural state vest in the government of the United Republic of Tanzania. The government holds these resources in trust for the people of the United Republic of Tanzania. Under the Land Act, all land in Tanzania is public land. That said, the Petroleum Act regulates the use of land in relation to oil activities. For example, land that is within close proximity to government reservoirs and dams, and land dedicated to other public purposes other than mining and burial grounds, cannot be used by for oil activities without the consent of the Minister of Energy and Minerals.

There is a legal distinction between surface and subsurface rights. For example, under the Petroleum Act 2015, the lawful occupier of land in a development area may continue to use the land for agricultural activity except where such activities interfere with petroleum development activities.

Under the Petroleum Act 2015, the extracted oil would transfer to allocated owners as prescribed by the production permit.

#### 11 What is the general character of oil exploration and production activity conducted in your country? Are areas off-limits to exploration and production?

Currently exploration is being undertaken both onshore and offshore. Under the Petroleum Act 2015, consent has to be sought from the Minister of Energy and Minerals before petroleum activities can be undertaken in certain areas for example, land dedicated to other public activities other than mining.

#### 12 How are rights to explore and produce granted? What is the procedure for applying to the government for such rights?

Under the Petroleum Act 2015, all petroleum rights are granted to the national oil company. The national oil company may elect to work with other entities:

*The National Oil Company may, subject to the Minister's consent and on advice by PURA, enter into partnership with a Tanzanian or a foreign entity through an open tendering process or a direct award of a block.*

*The licence granted under subsection (1) shall require the National Oil Company to maintain a participating interest of not less than twenty five per cent.*

The invitation of tenders should be advertised in a newspaper of wide circulation. The Petroleum Act 2015 provides for the creation of regulations to guide the tendering process. These regulations are yet to be implemented.

#### 13 Does the government have any right to participate in a licence? If so, is there a maximum participating interest it can obtain and are there any mandatory carry requirements for its interest? What cost-recovery mechanism is in place to recover such carry? Does the government have any right to participate in the operatorship of a licence?

See above.

#### 14 If royalties are paid, what are the royalty rates? Are they fixed? Do they differ between onshore and offshore production? Aside from tax, are there any other payments due to the government? Are there any tax stabilisation measures in place?

Under the model production sharing agreement and the Petroleum Act 2015, the national oil company should pay royalties on behalf of the contractor and the national oil company. The national oil company is mandated to deliver 12.5 per cent of total crude oil (prior to cost oil) for onshore crude oil and 7.5 per cent for offshore crude oil. The Petroleum Act 2015 provides for signature and production bonuses. It also provides for annual fees, which include acreage rental and training and research fees.

Under the Petroleum Act 2015, PURA is under an obligation of ensuring fairness and balancing of interests of the government and other participants in the industry. This is a stabilisation measure.

#### 15 What is the customary duration of oil leases, concessions or licences?

The Petroleum Act defines the duration of various licences.

A reconnaissance permit usually granted for surveys, and in some cases for limited drilling for calibration of data, is issued for a period not exceeding three years.

An exploration licence is issued for a term not exceeding four years. Thereafter, the licence may be extended twice, initially for a period of three years and finally for a period of two years.

A development licence is issued for a term not exceeding 25 years and thereafter may be extended for another term of 15 years.

Production permits are also issued for a specified period of time although this is not expressly indicated in the act.

**16 For offshore production, how far seaward does the regulatory regime extend?**

The application of the Petroleum Act 2015 extends to the subsoil of the continental shelf.

**17 Is there a difference between the onshore and offshore regimes? Is there a difference between the regimes governing rights to explore for or produce different hydrocarbons?**

There is a single law regulating hydrocarbon exploration, development and production in Tanzania: the Petroleum Act 2015 regulates both the onshore and offshore regimes.

**18 Which entities may perform exploration and production activities? Describe any registration requirements. What criteria and procedures apply in selecting such entities?**

The Petroleum Act 2015 provides registration requirements for entities that may enter into partnerships with the national oil company for the performance of exploration and production activities. These include:

- being a body corporate registered under the Companies Act or any other written law; and
- being of recognised capacity, technical knowledge and financial capability.

Registration of a company limited by shares under the Companies Act or registration of a foreign entity attracts a nominal fee. Additional duties are assessed on the value of the share capital indicated. The process of drafting the memorandum of understanding and articles of association and fulfilling all registration processes varies between two and four weeks.

**19 What is the legal regime for joint ventures?**

The legal regime for joint ventures is provided in the Petroleum Act 2015 and the Contract Act. That said, joint ventures involving the government or public entities may be subject to provisions under the Public Procurement Act. The broad scope of the Public Private Partnership Act also affects many joint venture transactions.

The Petroleum Act 2015 provides:

*Where two or more applicants jointly intend to apply for an award of acreage, the applicants shall enter into an agreement for cooperation for petroleum activities which shall be submitted to the Minister as a condition for entering into agreement.*

*The Minister may require from the applicant, information of a joint venture composed of specific companies as condition for award of an acreage.*

**20 How does reservoir unitisation apply to domestic and cross-border reservoirs?**

When applying for a development licence, the developer should indicate in its development plan whether the reservoir shall require unitisation. This applies only to domestic reservoirs. Cross-border reservoir unitisation has to be negotiated by the various countries with claims to the reservoir.

**21 Is there any limit on a party's liability under a licence, contract or concession?**

Such limits have to be negotiated by the parties.

**22 Are parental guarantees or other forms of economic support common practice? Are security deposits required in respect of any work commitment or otherwise?**

Yes, parental guarantees are common practice. The immediate parent may provide these guarantees. These guarantees are not unlimited. Security deposits are required for work commitment.

**Local content requirements**

**23 Must companies operating in your country prefer, or use a minimum amount of, locally sourced goods, services and capital?**

The Petroleum Act 2015 provides local content regulations for the oil and gas sectors. The local content regulations are yet to be enacted. Under the Petroleum Act 2015, licence holders, contractors and subcontractors are should give preference to Tanzanian goods and services.

If such goods and services are not available in Tanzania, foreign entities can enter into joint ventures with local companies. The local companies should have a stake of not less than 25 per cent in the joint venture.

All licence holders, contractors and subcontractors should prepare procurement plans of at least five years, showing their adherence to local content requirements. These procurement plans are submitted to PURA.

Although the local content regulations are yet to be enacted, ongoing debate between international oil companies and the government is focused on how to overcome the skills deficit in the short term.

**24 Describe any local content requirements likely to apply to oil companies operating in your country.**

See above.

**25 Describe any social programme payment obligations that must be made by a licensee, lessee or contractor.**

The Petroleum Act 2015 provides for the training of Tanzanians. All licence holders and contractors are required to submit a detailed training programme to PURA for approval. This training should cover all phases of the petroleum industry, taking into account gender equality, persons with disabilities, host communities and succession plans required under employment law.

**Transfers to third parties**

**26 Is government consent required for a company to transfer its interest in a licence, concession or production sharing agreement? Does a change of control require similar approval? What is the process for obtaining approval? Are there any pre-emptive rights reserved for the government?**

Yes, government consent is required for transfer of interests in licences. The consent of the responsible minister, the Minister of Energy and Minerals, is required before any transfer is made. The Petroleum Act 2015 provides the following requirements for approval of a transfer:

*An application for approval of transfer of an instrument shall be made to the Minister and shall be accompanied with:*

- (a) *an undertaking that the transferee is capable of discharging obligations of the transferor;*
- (b) *certificate of incorporation or compliance by the transferee;*
- (c) *transfer agreements between transferee and transferor;*
- (d) *certificate of tax clearance from the Tanzania Revenue Authority;*
- (e) *an integrity pledge by the transferee;*
- (f) *particulars of technical and industrial qualifications of the transferee and of his employees;*
- (g) *particulars of the kinds of financial resources available to the transferee, including capital, credit facilities and guarantees so available;*
- (h) *particulars of technical and industrial resources available to the applicant;*
- (i) *proposals with respect to the training and employment of Mainland Tanzanians; and*
- (j) *any other matter as the Minister may consider necessary.*

**27 Is government consent required for a change of operator?**

Consent may be required where the relevant agreement provides specific conditions, which may include non-transferability.

**28 Are there any specific fees or taxes levied by the government on a transfer or change of control?**

In many cases, transfer or change of control attracts capital gains tax under the Income Tax Act.

**Title to facilities and equipment**

**29 Who holds title to facilities and equipment used for oil exploration, development and transportation activities?**

Ordinarily contractors own the facilities and equipment used for oil exploration. Third-party contractors usually supply such equipment to the licence holders.

**Decommissioning**

**30 What laws or regulations govern abandonment and decommissioning of oil and gas facilities and pipelines? In summary, what is the obligation and liability regime for decommissioning? Are there any other relevant issues concerning decommissioning?**

The Petroleum Act 2015 provide laws on decommissioning. Licence holders are required to submit a decommissioning plan to PURA. This plan should be submitted at least five years before termination of production. Licence holders are also required to pay monies into the decommissioning fund before termination, five years after production has commenced or when production gets to 50 per cent of aggregate recoverable reserves or on notice of surrender. The amount deposited in the decommissioning fund shall be charged as operating costs, subject to recovery limitations.

**31 Are security deposits required in respect of future decommissioning liabilities? If so, how are such deposits calculated and when does their payment become due?**

See above.

**Transportation**

**32 How is transportation of crude oil and crude oil products regulated within the country and across national boundaries? Do different government bodies and authorities regulate pipeline, marine vessel and tanker truck transportation?**

EWURA regulates all petroleum transportation within the country.

**33 What are the requisites for obtaining a permit or licence for transporting crude oil and crude oil products?**

The main consideration for obtaining a permit appears to be compliance of the vehicles or vessels transporting oil products with Tanzania Bureau of Standards requirements. For example, the Petroleum Act 2015 provides as follows:

*A person shall not transport petroleum product using a vehicle, vessels or facility unless such vehicle, vessels or facility complies with the standards set out by the Tanzania Bureau of Standards.*

**Cost recovery**

**34 Where oil exploration and production activities are conducted under a production sharing contract, describe how recoverable costs can be determined and how recovery can be realised.**

The model production sharing agreement provides for the recoverable costs. These costs are recovered from crude oil in a particular contract area. They are recovered subsequent to deduction of royalties. Recoverable costs should not exceed at least 50 per cent of crude oil in a particular contract area in a given calendar year. Any costs that are not recovered are carried forward to the subsequent calendar year.

**Update and trends**

The anticipated oil pipeline from Uganda to Tanzania is likely to lead to regulatory changes in the midstream and downstream phases. We also expect that the local content regulations for the oil and gas sector will be enacted soon.

The Natural Wealth and Resources Contracts (Review and Re-negotiation of Unconscionable Terms) Act 2017, the Natural Wealth and Resources (Permanent Sovereignty) Act 2017 and the Written Laws (Miscellaneous Amendments) Act 2017 will substantially affect provisions on the regulation of oil in Tanzania.

**Health, safety and environment**

**35 What health, safety and environment requirements apply to oil-related facility operations? What government body is responsible for this regulation; what enforcement authority does it wield? Are permits or other approvals required? What kind of record-keeping is required? What are the penalties for non-compliance?**

The health, safety and environment requirements provided under the Occupational Safety and Health Authority Act and the National Environment Management Act apply to oil-related facility operations. The Occupational Safety and Health Authority and the National Environment Management Council were created to enforce the provisions of these laws. Permits are required under both laws. The regulatory bodies conduct audits to ensure that the relevant health, safety and environmental standards are in place. Accordingly, licence holders and contractors are required to keep records of such standards. Failure to comply with environmental standards attracts a penalty of 5 million Tanzania shillings or imprisonment for a term not less than six months.

**36 What health, safety and environmental requirements apply to oil and oil product composition? What government body is responsible for this regulation; what enforcement authority does it wield? Is certification or other approval required? What kind of record-keeping is required? What are the penalties for non-compliance?**

See above.

**Labour**

**37 What government standards apply to oil industry labour? How is foreign labour regulated and restricted? Must a minimum amount of local labour be employed? Are there anti-discrimination requirements? What are the penalties for non-compliance?**

See question 25.

**Taxation**

**38 What is the tax regime applicable to oil exploration, production, transportation, and marketing and distribution activities? What government body wields tax authority?**

See question 28.

Additional profit tax applies to production and is provided in the Petroleum Act 2015. Withholding tax is provided in the Income Tax Act. The Tanzania Revenue Authority wields regulatory authority over tax matters in Tanzania.

**Commodity price controls**

**39 Is there a mandatory price-setting regime for crude oil or crude oil products? If so, what are the requirements and penalties for non-compliance?**

Pursuant to the provisions of the Petroleum Act 2015, prices for petroleum and petroleum products are set by market rules of demand and supply, subject to the Energy and Water Utilities Regulatory Authority Act and the Fair Competition Act.

**Competition, trade and merger control****40 What government bodies have the authority to prevent or punish anticompetitive practices in connection with the extraction, transportation, refining or marketing of crude oil or crude oil products?**

The Fair Competition Commission prevents anticompetitive practices in Tanzania. The regulatory framework is provided in the Fair Competition Act.

**41 What is the process for procuring a government determination that a proposed action does not violate any anticompetitive standards? How long does the process generally take?**

The Fair Competition Commission Procedure Rules 2013 provide for filing of a merger notification to determine whether a proposed action is a merger. This process may take up to 95 days.

The Fair Competition Commission is reluctant to offer its opinion on classification of proposed actions in the absence of a merger notification.

**International****42 To what extent is regulatory policy or activity affected by international treaties or other multinational agreements?**

International treaties such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards affect regulatory policy in Tanzania.

**43 Are there special requirements or limitations on the acquisition of oil-related interests by foreign companies or individuals? Must foreign investors have a local presence?**

The Petroleum Act 2015 does not provide such requirements. However, most foreign companies operating in Tanzania have a local presence.

**44 Do special rules apply to cross-border sales or deliveries of crude oil or crude oil products? Are there any volumetric supply obligations for the local market that prevail over the export rights of the oil producer?**

The Petroleum Act 2015 provides domestic supply obligations for both the licence holder and the contractor. They are required to meet domestic supply from their proportional shares of production.

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