LEGAL REVIEW: OIL AND GAS EXPLORATION AND PRODUCTION IN THE GAMBIA

November 2021

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MORE IMAGINATION MORE IMPACT

INTRODUCTION TO REPORT

At Africa Oil Week 2021, the Ministry of Petroleum and Energy of The Gambia announced that it will be launching a mini-Licensing Round for the newly available offshore block A1.

Addleshaw Goddard has been appointed by the Ministry of Petroleum and Energy to provide legal support throughout the implementation of the Licensing Round, and we have prepared this report to assist bidders in their legal review of the opportunity.

This report provides an overview of the legal and regulatory framework in The Gambia. Parts of this section are written by posting a question and providing the answer to such pointed question to provide a clear and easily accessible overview of the legal and regulatory framework in The Gambia in areas relevant to those operating in the oil and gas sector or looking to invest in the oil and gas sector in The Gambia.

The information contained in this report is furnished solely for the purpose of assisting bidders in making their own evaluations of the opportunity to explore, develop and produce petroleum in The Gambia and participating in the Licensing Round 2021.

The information contained in, or otherwise made available to bidders pursuant to this report does not purport to be all-inclusive or to contain all the information that a bidder or its advisers may require or desire in relation to the Licensing Round and the opportunity to explore, develop and produce petroleum in The Gambia. The bidder should form its own views as to what information is relevant and make its own investigations, projections and conclusions and consult its own advisers to verify independently such information, and to obtain any additional information that it may require, prior to submitting the any proposal or relying on any information contained in this report.

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SECTION A: OVERVIEW OF LEGAL SYSTEM

1 THE LEGAL AND GOVERNING SYSTEM IN THE GAMBIA

1.1 **Legal System**

The Gambian legal system is mixed, consisting of English common, Sharia and customary law. The Constitution of the Republic of The Gambia defines the hierarchy of laws in The Gambia and confirms the role of Islam in the State. Article 4 states that the 'Constitution is the supreme law of The Gambia' while Article 7 states 'customary law [applies] so far as it concerns members of the communities to which it [relates]' and that the Sharia applies 'as regards matters of marriage, divorce and inheritance among members of the communities to which it [relates]'.

1.2 **Judicial Procedure**

The independence of the judiciary is set out in Article 120 of the Constitution, which states that the judiciary shall be independent, subject only to the Constitution and the law and shall not be subjected to the control or direction of any other person or authority.

No judicial decision shall be made unless all parties have had the opportunity to present their case and reasons shall be given for all judicial decisions.

The courts in The Gambia are:

(a) The Superior Courts comprising:

- (i) the Supreme Court;
- (ii) the Court of Appeal; and
- (iii) the High Court and the Special Criminal Court, and

(b) the Magistrates Court, the Cadi Court, District Tribunals and such lower courts and tribunals as may be established by an act of the National Assembly.

1.3 **International Treaties and Multinational Agreements**

The Gambia has signed a number of international treaties including the following:

(a) UN Convention on the Law of the Sea; and

(b) Paris Agreement of 2015 UNFCCC.

The Gambia has not ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention).

The Gambia has not yet been assessed against the Extractives Industries Transparency Initiative.

1.4 Government

The Gambia is officially a presidential republic. The current head of state is President Adama Barrow, who was elected in January 2017. The President is the head of the government. The president is elected every five years by a simple majority popular vote (next elections to take place on 4 December 2021). The unicameral National Assembly forms The Gambia's legislative branch of government; members of this Assembly are elected to five year terms.

2 REGULATION OF OIL AND GAS

2.1 Regulatory Bodies

(a) **Who regulates the extraction of oil and gas in The Gambia?**

(i) The Ministry of Petroleum and Energy of The Gambia

The Ministry is the governmental institution that provides general policy guidance to the Commission and was created in 2016 following the merger of the Ministry of Energy and Ministry of Petroleum. It issues policies recommended by the Commission and deals with petroleum activities that may have cross-border impacts. It is headed by the Minister of Petroleum, who as of the date of this Report is Hon. Fafa Sanyang.

Roles of the Minister include the following (Sections 3, 12, 13 and 14 of the Petroleum Act):

(A) implementation of the Petroleum Act including: licensing and permits; compliance; costs recovery; inspection and audit; and ensuring that the financial guarantee is maintained in an adequate amount;

(B) empowerment to close or redefine the boundaries of an existing Licence Area which are not covered by a licence or permit; and

(C) empowerment to open a new Licence Area.

(ii) The Commission

The new Petroleum Commission Law established the Commission in 2021, which is now the responsible authority for regulating, monitoring and supervising petroleum operations in The Gambia. The functions of the Commission include:

(A) promote planned, well executed, sustainable and cost efficient petroleum activities to achieve optimal levels of resource exploitation for the overall benefit and welfare of citizens;

(B) recommend to the Minister national policies related to petroleum activities;

(C) monitor and ensure compliance with national policies, laws, regulations and agreements related to petroleum activities;

(D) conduct and coordinate activities related to the licensing process; and

(E) promote local content and local participation in petroleum activities according to applicable laws and regulations to strengthen national development.

The current Commissioner for Petroleum as of the date of this report is Jerreh Barrow.

(iii) GNPC

GNPC is a state-controlled company with the right to participate in petroleum operations in the country. GNPC may acquire rights through direct acquisition or under a bid process conducted by the Commission.

The objectives of GNPC are to:

(A) undertake or engage in petroleum operations or exploration, development, production and disposal;

(B) buy, sell, trade, store, exchange, import and export petroleum, natural gas and petroleum products;

(C) engage in research and development programmes related to petroleum; and

(D) engage in any other business activities incidental or conducive to the attainment of the above objects.

2.2 The legal framework for oil regulation

(a) What are the key laws and regulations that make up the principal legal framework regulating oil and gas activities in The Gambia?

In addition to the Constitution, the laws of The Gambia consist of Acts of the National Assembly and subsidiary legislations made under such Acts. The Gambian oil and gas sector is regulated by the general provisions of the Constitution and by a number of laws, in particular:

(i) Petroleum Exploration, Development and Production Act, 2004 and as amended in 2007 ("Petroleum Act");

(ii) Petroleum Commission Act 2021;

(iii) Gambia National Petroleum Corporation Act 2014;

(iv) National Environment Management Act 1994, as amended and the Environmental Impact Regulations 2014;

(v) Gambia Investment and Export Promotion Agency Act 2015;

(vi) Income and Value Added Tax Act 2012 and Income and Value Tax Rates Regulations 2018;

(vii) National Disaster Management Act;

(viii) Companies Act 2013;

(ix) Public Finance Act 2014;

(x) Maritime Administration Act 2006; and

(xi) National Energy Policy 2015 – 2020.

The Petroleum Act establishes the regulatory framework for the performance of oil and gas activities.

2.3 Rights to oil and gas

(a) How are rights to oil and gas held?

All rights in relation to the ownership, exploration, development, production and disposal of petroleum existing in its natural state in The Gambia are vested in the State.

2.4 Nature and Procurement of Oil and Gas Rights

(a) Types of Oil and Gas Rights

A person cannot undertake petroleum operations in The Gambia without either a permit or a licence. These are the only two types of oil and gas rights granted under the Petroleum Act.

Section 22 sets out that permit holders have the non-exclusive right to carry out reconnaissance operations, which are operations carried out for, or in connection with the search for petroleum by geological, geophysical or photo-geological surveys and includes remote sensing techniques. However, as per Section 24 (2), a permit does not give the permit holder the right to a permit in respect of the area that is subject to the licence. Largely permits are granted to seismic data providers when undertaking operations in a particular area.

Section 27 sets out that licence holders have the exclusive right to carry out petroleum operations and execute such works as may be necessary or expedient in relation to the petroleum operations in the area allocated under a licence. Petroleum operations means the exploration, development and production of petroleum and also includes any activity relating to the rehabilitation of the environment.

The successful bidder will be required to enter into a licence with the GOTG, which shall be in substantially the same form as the Model PEPLA. The Model PEPLA is currently published on the Ministry's website and the fiscal and commercial terms are under review in preparation of this Licensing Round.

(b) **What are the government participation rights in licences?**

The GOTG has the option to acquire a 10% participating interest in the licence from the effective date of the licence, such that the winning bidder shall be granted 90% and the GOTG will be granted 10%. Following the commencement of a Development and Production Period the GOTG has the option to acquire an additional 5% bringing its total participation in the licence up to 15%.

It is expected, as with other licences, that GNPC will take on the 10% participating interest in the A1 Licence immediately from the effective date of the licence. This means that the successful licensee will be required to enter into a joint operating agreement with GNPC. For further detail in relation to the participation of GNPC in the licence, please refer to Section C Model PEPLA Key Terms.

2.5 Operators and Licensees

(a) **Which entities may perform exploration and production activities?**

In accordance with Section 29 of the Petroleum Act in order to be eligible for a licence, an applicant must be:

(i) an individual who is a citizen of The Gambia; or

(ii) if a body corporate incorporated outside of The Gambia, it must have established a place of business in The Gambia and be registered as a foreign company in accordance with the Companies Act.

There are no local content or local nationalisation requirements for foreign owned entities established in The Gambia.

Note that for the purposes of the 2021 Licensing Round it is expected that it will be a requirement that the successful bidder has to establish a Gambian limited company as a subsidiary established for the purpose to enter into the PEPLA, rather than a branch of the foreign entity.

(b) **Is there any limit on a party's liability under a licence?**

Under Article 3.1.1 of the Model PEPLA, in the event that the licensee is made up of more than one person, the liability of the licensees shall be joint and several.

Under Article 31 of the Model PEPLA the licensee is required to indemnify the GOTG in relation to claims incurred by the GOTG as a result of any third party claims demand or action that has been made against the GOTG as a result of the actions of the licensee.

(c) **Is government consent required for assignment and change of control?**

Yes, under Section 36 of the Petroleum Act, a licensee or permit holder may not assign or transfer its right in a licence or permit without the prior written consent of the Minister. Assignment is also regulated in the Model PEPLA (Article 23) whereby the licensee may not assign its interest, or undertake any change in control without the prior written consent of the Minister. However, the Minister must have reasonable grounds (such as concerns regarding the technical or financial capabilities and resources of the proposed assignee) to refuse consent to the assignment. It should also be noted that the request for assignment to the Minister should be accompanied by all relevant documents, to aid the Minister in making a decision.

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

Any income that accrues as a result of a sale, transfer of any share or interest in the licence, the licensee, or any company whether registered within or outside of the The Gambia that derives its value substantially from the licence, shall be subject to capital gains tax in accordance with the Income Tax Act (Article 8.18 Model PEPLA).

In accordance with the Model PEPLA and in the event of a proposed assignment, the Minister may require an undertaking from the assignee to pay all amount to be paid that remain outstanding under the licence, including the payment of capital gains tax or any other taxes or levies due.

(e) **Is government consent required for entry into a joint operating agreement?**

Entry into a joint operating agreement is a condition precedent to the effectiveness of the Model PEPLA and must be approved by the GOTG. Note that it is anticipated that the Government shall participate in the licence through GNPC, such that GNPC will be a party to the joint operating agreement.

The joint operating agreement will be based upon the AIPN 2012 Joint Operating Agreement.

2.6 **Facilities and Infrastructure and Decommissioning**

(a) **Who holds title to facilities and equipment used for oil exploration, development and transportation activities during the term and on termination of the Licence?**

The licensee has title to the facilities, materials, equipment and wells in a Licence Area during the term of the licence. However, on termination the GOTG has an option to have those assets transferred to them (for no consideration) (Section 50 (3) Petroleum Act). In the event that the GOTG exercises this option, the licensee will not be required to undertake its rehabilitation activities under Section 50 of the Petroleum Act.

(b) **What laws or regulations govern abandonment and decommissioning of oil and gas facilities?**

Section 50 of the Petroleum Act requires that before terminating the licence, the licensee is required (at his own cost and expense) to rehabilitate the environment affected by petroleum operations to its natural state or a state acceptable to the National Environment Agency. For the purpose of the Petroleum Act, rehabilitation means:

(i) the removal of all facilities, materials and equipment;

(ii) plugging and closing off of abandoned wells; and

(iii) taking of other measures for conservation and protection of natural resources.

The Model PEPLA also regulates decommissioning obligations, which include the requirement on the licensee to:

(A) submit necessary measures to be taken in relation to decommissioning, including amortisation of costs and recovery of costs, as part of the development and production plan (Article 7.6.3 Model PEPLA).

(B) as a condition precedent to the approval of a development and production plan, enter into a decommissioning fund agreement which would set out the obligations of the licensee in relation to the establishment of a decommissioning fund and periodic contributions into the decommissioning fund (Article 7.7).

(c) **Are security deposits required in respect of future decommissioning liabilities?**

As a condition precedent to the approval of a Development and Production Plan the GOTG may require that the licensee enters into a Decommissioning Fund Agreement and require that the licensee contributes to a decommissioning fund for the purposes of meeting all costs and liabilities associated with decommissioning, however this is not mandatory.

2.7 **Environmental impact assessments (EIAs)**

(a) **Are there any environmental regulations?**

The licensee will be required to comply with any environmental obligations set out in the National Environmental Management Act. Further, there are specific environmental regulations contained within Section 49 of the Petroleum Act.

Under Section 49 of the Petroleum Act, a licensee is required to complete an environmental impact assessment (EIA) before the Minister will issue the licence or permit. The EIA must, among other things, establish baseline information concerning the environment of the areas that are, or may be, affected by the petroleum operations to determine what protection, remedial measures and environmental management requirements. Note that whilst the Petroleum Act requires that an EIA is undertaken prior to the issuance of a licence, the Model PEPLA has waived this requirement and instead the EIA must be undertaken within 180 days of the Minister sending notice to the licensee.

(b) **Is an EIA required before extracting or processing onshore or offshore oil and gas?**

Yes, see above.

Note that for the purposes of Block A1, BP has already undertaken an environmental impact assessment, and therefore it is likely that this requirement will be waived for the successful bidder or that the successful bidder will be able to use the previous EIA for its own purposes and only make amendments where required.

(c) **Are flare and vent regulations in place?**

There are no specific regulations in relation to flaring, however, the Model PEPLA states the Licensee shall not flare any petroleum for the duration of the Licence, including during the testing of any reservoir or producing interval without the express written consent of the Commissioner unless it is required to do so in an emergency situation.

If the licensee does conduct any flaring, then it must be done in accordance with industry best practice and any request submitted shall include an evaluation of reasonable alternatives to flaring.

2.8 Enforcement

(a) **What are the regulator's enforcement powers?**

Section 5 of the Petroleum Commission Law sets out the general functions of the Commission, which includes to take the necessary action to regulate petroleum activities, manage the petroleum resources and ensure compliance with policies and laws for the petroleum sector.

(b) **Is there a right of appeal against the regulator's decisions?**

The Petroleum Act contains provisions for appeal against certain decisions of the Commissioner including appeals against decisions made under the right of inspection (Article 53 of the Petroleum Act) and under any decision as to compensation for landowners in relation to petroleum operations (Article 18 of the Petroleum Act).

2.9 Insurance

(a) **Are there any insurance requirements that must be met?**

Yes, under Section 44 of the Petroleum Act, the licensee must obtain and maintain all insurance in respect of the petroleum operations required in accordance with best industry practice and must name the GOTG as an additional named insured.

Further, under the Model PEPLA, the insurance must cover:

(i) the full replacement cost if there is any loss or damage to all assets for so long as they are used in the petroleum operations;

(ii) pollution caused in the course of the petroleum operations for which the Licensee, the subcontractor or the operator may be held responsible;

(iii) property loss or damage or bodily injury suffered by any third party in the course of the petroleum operations;

(iv) the cost of removing wrecks and clean-up operations following an accident in the course of the petroleum operations; and

(v) the Licensee's, subcontractor's and/or the operator's liability to its employees engaged in the petroleum operations.

3 DATA AND INFORMATION

(a) **Who has ownership of data and information prepared during the course of petroleum operations?**

As set out under Section 38 of the Petroleum Act, the GOTG has the title in all original data and information resulting from the petroleum operations (including, the terms of the licence or permit, any associated record, plan, map, sample, seismic information or data relating to petroleum operations or reports and associated work product produced from them (Data). The Model PEPLA also further sets out the obligations of the licensee in relation to Data under Article 21, in particular transfer requirements on termination. Note that despite title to all Data sitting with the GOTG, on termination, the GOTG shall grant the licensee a licence to use such Data without geographical restraints.

SECTION B: FISCAL REGIME

1 FISCAL REGIME

1.1 Breakdown of fiscal regime

(a) **If royalties are paid, what are the royalty rates? Are they fixed?**

The royalty rate is a fixed term set out in the Model PEPLA. As part of the 2018 Licensing Round, the royalty rates were as follows:

(i) Crude Oil

(A) Prior to cumulative production of Crude Oil exceeding 50 million barrels, the royalty rate was 5%.

(B) After exceeding 50 million barrels, the royalty rate was 7.5%.

In addition to the royalty rates mentioned above, as part of the 2018 Licensing Round one of the biddable terms was an 'Additional Royalty' which was added to the two base rates above.

(ii) Crude Oil from a Satellite Development: 25%.

(iii) Crude Oil Produced from each Production Area prior to completion of permanent Production facilities in that Development and Production Area: 25%.

(iv) Associated Gas: 5%.

Note that as part of the 2021 Licensing Round, the GOTG is undertaking a market sounding and talking to IOCs to better understand the current market and constraints for IOCs. Therefore, the commercial terms listed above should not be deemed to be fixed. With this being said, it is worth mentioning that some of our earlier Licences have a sliding scale approach to royalty rates.

(b) **Aside from tax, are there any other payments due to the government?**

Under the Model PEPLA, there are a number of additional payments due to the GOTG, these include a Signature Bonus to be determined by the licensee during the bidding phase, a 2,000,000 USD bonus within 30 days of the date when the Commissioner approves the first Development and Production Plan, a 2,000,000 USD bonus within 30 days of the date when the Commissioner approves a subsequent Development and Production Plan. If an already approved Development and Production Plan is amended to incorporate a Satellite Development, then within 30 days a separate 2,000,000 USD Development and Production Plan Bonus will be due.

Production bonuses are also due at various stages of the development. An initial production bonus of 10,000,000 USD is payable upon completion and commissioning of sufficient infrastructure to commence Production of Crude Oil. A production bonus of 10,000,000 USD will then be payable on production reaching certain thresholds in 50,000 bopd increments.

The licensee is also required to pay ground rents of USD 250 / sq km during the exploration phase and USD 1,000 sq km during the development and production phase.

Note that as part of the 2021 Licensing Round the GOTG is undertaking a market sounding and talking to IOC to better understand the current market and constraints for IOCs. Therefore, the commercial terms listed above should not be deemed to be fixed.

(c) **Are any tax stabilisation measures in place?**

Yes, please refer to Section C (1.15) (Economic Stabilisation).

(d) **Which government authority is responsible for tax collection?**

The Gambia Revenue Authority.

(e) **What taxes and duties apply on import and export of oil and gas?**

Section 35 of the Petroleum Act specifically states that the contractor shall be exempt from the payment of all taxes, duties, charges and levies arising out of or in connection with petroleum operations except for:

(i) income tax pursuant to the Income Tax Act;

(ii) taxes and other levies imposed by local authorities which are not calculated by reference to net income and are not in excess of those applied generally to all industries and enterprises in The Gambia;

(iii) environment tax; and

(iv) any other tax or levy that is specifically set out in the licence.

1.2 **Applicable Taxes as set out in the Model PEPLA.**

	REFERENCE	DESCRIPTION
Corporate Income Tax	Model PEPLA 8.18 Schedule Two Income Tax Act Sections 47-50 Petroleum Act	CIT related to upstream petroleum operations is implemented at a sliding scale rate starting from 35% and rising to 40% depending on Net Income from Petroleum Operations. Net Income is calculated by a formula which deducts direct operating costs and a share of resource expenses (held in balance) from gross income. Royalties are deemed to be a Direct Operating Cost and therefore deductible. Signature bonuses and production bonuses shall not be deemed to be Direct Operating Costs or Resources Expenses and are therefore not deductible.
Value Added Tax	Model PEPLA 8.17 Section 142.3(b) Income Tax Act	Licensee is exempt until Development and Production Phase. If VAT applies the rate is 15%.
Service Withholding Tax	Model PEPLA 8.1 Sections 91 and 11 Income Tax Act	Section 91 Income Tax Act sets a rate of 15% on payments to non-resident persons if they are subject to tax under Section 11 Income Tax Act unless the services are carried out by a non-resident with permanent establishment.
National Development Levy	Model PEPLA 8.15	Licensee is exempt from paying National Development Levy until Development and Production Phase.
Payroll Tax	Model PEPLA 8.15	Licensee is exempt from paying Payroll Tax until Development and Production Phase.
Import Duties	Model PEPLA 17.1	Licensee is exempt from paying import duties in relation to goods that are used solely for Petroleum Operations, except for those, which are then resold in the Gambia. “Petroleum Operations” means the exploration, development and production of petroleum and includes any activity relating to the rehabilitation of the environment pursuant.
Dividend Withholding Tax	Sections 91 and 11 Income Tax Act	Section 91 Income Tax Act sets a rate of 15% on payments to non-resident persons if they are subject to tax under Section 11 Income Tax Act, unless the payment is based on a holding that is “effectively connected” with a non-resident with permanent establishment.
Capital Gains Tax	Model PEPLA 8.18	Under the Model PEPLA direct and indirect asset sales are subject to CGT as per the Income Tax Act, which was specifically amended in May 2018 to confirm that petroleum licenses and operations are subject to CGT.

SECTION C: MODEL PEPLA KEY TERMS

1 MODEL PEPLA

This section of the report summarises the key terms of the current Model PEPLA being used by the GOTG. However, it should be noted that the GOTG is currently undertaking a review of the Model PEPLA to ensure that the commercial terms and fit for purpose in the current market environment. Therefore, whilst the structure of the Model PEPLA will largely remain the same, prospective applicants for licences in The Gambia should be aware that the commercial terms may vary to those listed below, and this report should be used for reference only.

1.1 **Term**

(a) The Model PEPLA becomes fully effective on the effective date following the satisfaction of a number of conditions precedent, which include the licensee demonstrating that it has complied with the applicable insurance requirements set out in the agreement, the licensee providing a financial guarantee, and the approval and execution of the joint operating agreement.

(b) Following the effective date, the Model PEPLA will continue in full force and effect until either: the last day of the Exploration Period (if there has been no discoveries); the last day of a Development and Production Period; or the day that is thirty (30) years from the Effective Date, (whichever is earlier). Therefore, the term of the Model PEPLA is for a maximum of thirty (30) years.

1.2 **Minimum Work Obligations**

The licensee has an obligation to undertake minimum work obligations during each Exploration Period. The minimum work obligations shall be set out in a schedule in the licence. In the event that the licensee does not carry out the entire minimum work obligations as set out in the licence, the licensee shall be required to pay an amount equal to the estimated expenditures not completed.

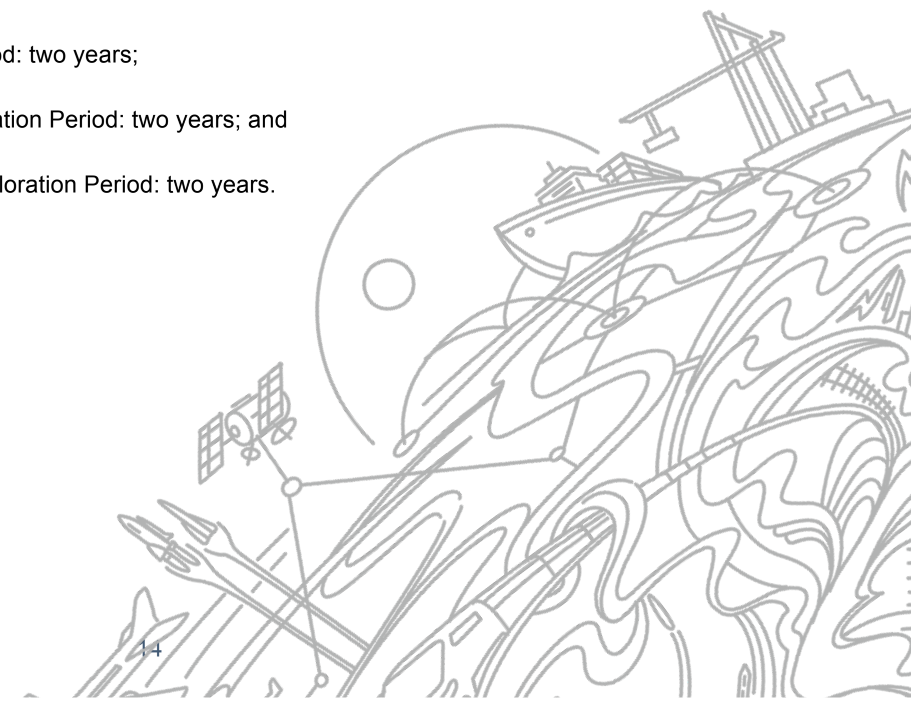
1.3 **Exploration Period**

(a) The Exploration Period of the Model PEPLA includes an initial two-year exploration period, followed by two additional two-year extension periods. The two additional extension periods are granted by the Ministry subject to the licensee having completed the required minimum work obligations. The Exploration Periods are as follows:

(i) Initial Exploration Period: two years;

(ii) First Extension Exploration Period: two years; and

(iii) Second Extension Exploration Period: two years.



(b) During each exploration period above, the licensee is required to complete its minimum work obligations as set out in Schedule 1 of the licence. If the licensee does not complete the minimum work obligations of the relevant Exploration Period, the licensee will not be able to proceed to the subsequent two-year extension period, and will be required to relinquish and terminate the licence. In the event the licence is terminated due to a failure to carry out the minimum work obligations in the Exploration Period, the licensee will be required to pay the GOTG an amount equal to the minimum work obligations not undertaken.

(c) In addition to the three Exploration Periods mentioned above, the GOTG may in its absolute discretion, grant the licensee an additional one hundred and eighty days' extension period in order to complete any works still outstanding.

1.4 **Relinquishment**

(a) The licensee is required to relinquish:

(i) at least 30% of the Licence Area on or prior to the commencement of the First Extension Exploration Period;

(ii) at least 25% of the Licence Area on or prior to the commencement of the Second Extension Exploration Period; and

(iii) 100% of the Licence Area at expiry of the Exploration Period.

(b) Any areas which are either subject to continued appraisal or form part of a Development and Production Area are not subject to the relinquishment requirements.

1.5 **Financial Guarantee**

(a) As a condition precedent to the satisfaction of the Model PEPLA (and as a condition precedent to each exploration extension period) the licensee is required to provide a financial guarantee for the benefit of the GOTG for the duration of the licence. The financial guarantee can be either a parent company guarantee or a bank guarantee in the form as appended to the Model PEPLA, and shall be to the value of thirty-five million United States Dollars (USD 35,000,000) during each Exploration Period and two hundred and fifty million United States Dollars (USD 250,000,000) during a Development and Production Period.

(b) Wherever the licensee is formed by more than one entity, each entity shall provide a financial guarantee in an amount pro rata to its participating interest share.

1.6 **Government Participation**

(a) On the Effective Date the GOTG shall acquire a 10% participating interest in the licence, such that the winning bidder shall be granted 90% and the GOTG will be granted 10%. The GOTG will hold its interest through the Gambia's national oil company, GNPC. On the commencement of a Development and Production Period the GOTG has the option to acquire an additional 5% bringing its total participation in the licence up to 15%.

(b) GNPC's interest during the Exploration Period is a free carried interest, such that for the duration of the Exploration Period, GNPC shall not be liable for any expenses or payments in relation to exploration operations undertaken by the licensee nor its participating share of claims, losses, costs, liabilities arising out of negligence or wilful misconduct of the licensee. However, in the event that GNPC wishes to take an interest over and above the initial 10% during the Exploration Period, GNPC shall be liable for each of the expenses, payments, claims, losses, costs and liabilities as mentioned above. In the event that GNPC transfers its participating interest to a third party that is not a government entity, the new licensee shall not benefit from the free carry granted to GNPC during the Exploration Period.

(c) GNPC's interest during the Development and Production Period is not carried so that GNPC will be liable for its participating interest share of all expenses incurred by the licensee in relation to petroleum operations in the Development and Production Area after the commencement of the Development and Production Period. However, GNPC will not be liable for its participating interest share of any claims, losses, costs, liabilities or expenses arising out of in connection with the negligence, gross negligence or wilful misconduct of the licensee during a Development and Production Period.

1.7 **Development Loan**

(a) Whilst this concept was not in the original Model PEPLA, it is likely that the concept of a 'Development Loan' may be included in the revised Model PEPLA.

(b) The Development Loan becomes relevant during the Development and Production period, whereby GNPC has the option to request that the other licensees pay for GNPC's participating interest of all expenses incurred by the licensees in relation to petroleum operations in that Development and Production Area.

(c) GNPC shall re-pay the Development Loan from its participating share of production, by first paying for on-going expenses incurred by the licensee on behalf of GNPC, and then repaying the Development Loan (with interest). GNPC has the option to re-pay the Development Loan in full at any time and revert to paying its own participating share of expenses upon giving notice to the other licensees. In the event that GNPC fails to repay the Development Loan in accordance with the licence, the other licensees will be permitted to set-off any amounts owed to them against royalties.

(d) Where GNPC transfers its participating interest to a third party, GNPC will still be liable for the Development Loan.

1.8 **Payments under the Model PEPLA**

(a) The Licensee must make the following payments or contributions under the Model PEPLA:

(i) Royalties;

(ii) Local Content Contribution;

(iii) Rental Payments;

(iv) Signature Bonus;

(v) Development and Production Bonus;

(vi) Additional Profits Payment;

(vii) Domestic Goods and Services Contribution; and

(viii) Expenditure on Training and Resources during Exploration.

Note that the GOTG is currently undertaking a market sounding and talking to IOC to better understand the current market and constraints for IOCs. Therefore, the commercial terms that were previously set out in the Model PEPLA and listed in this report should not be deemed to be fixed, but are included for reference only.

1.9 **Domestic Supply Obligations**

Any Crude Oil domestic supply requirements of the GOTG shall in the first instance be met by royalty Crude Oil and the GOTG's participating interest share of production (if the Government is participating). If there is a domestic demand over and above what is said out above, the Commissioner has the right to demand that the licensee sells up to 15% of the licensee's participating interest to the GOTG. In order to exercise this right, the GOTG is required to provide three months' written notice and setting out how much will be required and for how long. The licensee has the right to set-off or deduct any amount payable by the GOTG in respect of the domestic supply of Crude Oil against royalty payments due to the GOTG.

Note that the GOTG is currently undertaking a market sounding and talking to IOC to better understand the current market and constraints for IOCs. Therefore, the commercial terms that were previously set out in the Model PEPLA and listed in this report should not be deemed to be fixed, but are included for reference only.

1.10 **Training**

The licensee has a general obligation to establish training programmes for Gambian personnel that work in the petroleum sector and ensure the transfer of management and technical skills for effective petroleum operations. The licensee is also required to pay the GOTG 500,000 USD per year during the Exploration Period and 1,000,000 USD per year during the Development and Production Period in respect of each Development and Production Area and each Satellite Development.

1.11 **Local Content**

Under the Model PEPLA the licensee is required to pay the Local Content Contribution into the Local Content Fund within thirty (30) days of the commencement of a Development and Production Period, the Local Contribution being 1% of the annual expenditure of any given Work Programme and Budget. Further, the licensee is also required to pay the Domestic Goods and Services Contribution into the Local Content Fund.

Note that the GOTG is currently undertaking a market sounding and talking to IOC to better understand the current market and constraints for IOCs. Therefore, the commercial terms that were previously set out in the Model PEPLA and listed in this report should not be deemed to be fixed, but are included for reference only.

1.12 **Termination**

Termination in the Model PEPLA can be triggered by:

(a) The Licensee being in material default of any obligation under the PEPLA or of any obligation in another PEPLA entered into with the Ministry;

(b) The Licensee failing to comply with Work Programme Obligations and Minimum Work Obligations;

(c) The Licensee failing to comply with obligations in relation to a Discovery and Discovery Warranting Appraisal;

(d) A prolonged Force Majeure Event; and/or

(e) The Licensee failing to comply with obligations in respect of its Financial Guarantee.

1.13 **Dispute Resolution and Sovereign Immunity**

The dispute resolution procedure set out in the Model PEPLA is international arbitration in accordance with the UNCITRAL Arbitration Rules, to take place in London UK. However, where a dispute is a technical dispute and the licence specifically states that it shall be referred to an expert, the parties agree to appoint an expert in accordance with the ICC International Centre for ADR in accordance with the Rules for the Appointment of Experts and Neutrals of the International Chamber of Commerce.

The GOTG waives any rights it has to claim sovereign immunity for itself or any of its assets, which includes immunity from any judicial, administrative or other proceedings, arbitration, expert determination.

1.14 **Governing Law**

The governing law of the Model PEPLA is Gambian law.

Gambian commercial law is based upon English common law, and incorporates the English common law principles of equity and contract law.

1.15 **Economic Stabilisation**

The GOTG understands that certainty and predictability are key ingredients for the success of long term investment projects and has an objective to mitigate the risks of doing business in a frontier market such as The Gambia. As part of this the GOTG has developed a fiscal regime for the Model PEPLA that is fixed and shall be subject to an economic stabilisation clause. Where there has been a change in law that has a material adverse effect (being a material increase in the cost to the Licensee, or a material decrease in the gross revenue received by the licensee) the GOTG is required to pay the licensee compensation in order to put the licensee in the same economic position as the licensee would have been had such change in law not occurred. The requirement on the GOTG to pay compensation is subject to the relevant change in law event having a material adverse effect in excess of USD 5,000,000.

ANNEX 1 DEFINITIONS

Commission means The Gambia Petroleum Commission.

GNPC means Gambia National Petroleum Company.

GOTG means the Government of The Gambia.

Licensing Round means the licensing round to be launched by the Ministry on the 8th November 2021 in relation to block A1.

Minister means the Minister for Petroleum and Energy of The Gambia, or the minister from time to time responsible for the administration of Petroleum Operations.

Ministry means the Ministry for Petroleum and Energy of The Gambia, or the Ministry from time to time responsible for the administration of Petroleum Operations.

Model PEPLA means Model Petroleum Exploration and Production Licensing Agreement published on the Ministry's website.

Petroleum Commission Law means the Petroleum Commission Act No. 13 of 2021.

Petroleum Act means the Petroleum (Exploration, Development and Production) Act No. 7 of 2004 as amended by Act No.2 of 2007.

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