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BUSINESS LAW FIRM FOR AFRICA

FOCUS ON THE NEW DECREE IMPLEMENTING THE PETROLEUM CODE

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On May 4, 2023, Decree No. 2023/232, laying down the conditions of implementation of Law No. 2019/008 of April 25, 2019 on the Petroleum Code was published under the emergency procedure (hereinafter, the "**Implementing Decree**").

The Implementing Decree has been promulgated in accordance with Article 137 of the Law No. 2019/008 of April 25, 2019 on the Petroleum Code (hereinafter, the "**Petroleum Code**") which provides indeed that its conditions of implementation will be set by regulation.

Thus, four (04) years after the entry into force of the Petroleum Code, its long-awaited Implementation Decree comes in to repeal all the provisions of the previous Decree No. 2000/465/PM of June 30, 2000 setting the conditions of implementation of Law No. 99/013 of December 22, 1999 on the Petroleum Code. This previous decree, which remained in force, seemed anachronistic and outdated in respect to the present Petroleum Code.

This new text brings major precisions and significant clarifications permitting to concretize the reforms of the oil sector initiated by the Petroleum Code, with the aim of making the upstream oil sector more attractive and more competitive in Africa, to concretize and improve the promotion of oil operations in the whole territory, and finally, to better safeguard the interests of Cameroon before the always more powerful oil firm.

On the basis of the foregoing, we analyze below (1) oil titles and (2) oil operations.

1. OIL TITLE

An oil title is a legal document attesting to the ownership or exploitation rights of a specific petroleum resource. It is issued by a government or competent authority to an oil company, granting it the exclusive right to explore and exploit a particular oil deposit. In some cases, this title may also give the holder the right to transport hydrocarbons within a given region, from production facilities to processing plants.

In the upstream oil sector, a distinction must be made between the various oil permits. There are two types of title: oil contracts (1.1) and authorisations (1.2). These titles are of crucial importance in the petroleum sector, as they govern and control the exploration, exploitation and development of petroleum resources. They ensure the proper and regulated management of the upstream petroleum sector, while safeguarding the interests of the parties involved and promoting a nation's economic and energy development.

At the same time, it is important to stress the importance of incentives (1.3) in the upstream oil sector. These measures are put in place by governments or competent authorities to stimulate investment and promote the sustainable development of the oil industry.

1.1. Oil contracts

Law No. 2019/008 of 25 April 2019 on the Petroleum Code (hereinafter the "**Petroleum Code**") notes the protean nature of the petroleum contract by defining it as a concession contract, a production sharing contract or a risk services contract, entered into between the State and a holder to carry out, on an exclusive basis, the exploration for and exploitation of hydrocarbons within a defined perimeter[1].

The concession contract is an oil contract attached to a hydrocarbon exploration licence (and, where applicable, to one or more exploitation concessions), under which the holder assumes the financing of petroleum operations and disposes of the hydrocarbons extracted during the period of validity of the said contract, subject to the rights of the State to collect the royalty in kind[2].

A concession contract is one of the most common forms of oil contract. It grants the holder extensive rights over the area concerned, enabling it to prospect for, explore for and exploit hydrocarbons. In return, the licensee assumes responsibility for the necessary investments and for the risks associated with the operations.

On the other hand, the production sharing contract is a contractual mechanism whereby the State and the licensee share the oil production obtained. Under the production sharing contract, the State, directly or through the *Société Nationale des Hydrocarbures* ("**SNH**"), contracts the services of a contractor to carry out, on behalf of the State and on an exclusive basis, within the defined perimeter, exploration activities and, in the event of the discovery of a commercially exploitable hydrocarbon deposit, exploitation activities[3].

Finally, the risk services contract generally involves a specialised oil company providing technical and operational services to carry out hydrocarbon exploration and exploitation activities. Under this contract, the State or SNH grants a qualified person, who assumes the financing risks, exclusive rights to explore for and exploit hydrocarbons within a defined perimeter. In this case, the licensee is remunerated in cash[4].

The Implementing Decree clarifies several terms and conditions of petroleum contracts. It is therefore appropriate to present the clarifications relating to the various provisions on oil contracts, those relating to their transmission; those relating to the price of hydrocarbons exploited, local content and the change of oil regime.

[1] Article 2 of the Petroleum Code.
[2] Article 15 of the Petroleum Code.
[3] Article 16 of the Petroleum Code.
[4] Article 18 of the Petroleum Code.

1.1.1. Miscellaneous provisions on oil contracts

The Implementing Decree sets out various general provisions applicable to oil contracts[5] . Firstly, the holder of an oil contract may request an extension of its contractual scope if it can prove the discovery or extension of an oil deposit outside the limits of the exploration or exploitation licence.

This extension may lead to a renegotiation of the economic terms of the oil contract, at the State's discretion.

Secondly, when an application for an oil contract concerns the exploitation of deposits that have already been discovered, the conclusion of the contract gives rise to the institution of an exploitation authorisation by presidential decree. However, in the case of a production sharing contract, the signing of the contract allows hydrocarbon development and exploitation activities to begin before the publication of the decree establishing the corresponding operating licence.

Another provision concerns the possibility of concluding two separate oil contracts, one for the exploitation of liquid hydrocarbons and the other for the exploitation of natural gas, on the same perimeter. The conditions of this situation are defined between the State and the holder of the oldest oil contract on the perimeter concerned.

This new provision is of particular concern to us. The possibility of concluding two separate oil contracts for the exploitation of liquid hydrocarbons and natural gas on the same perimeter can present a number of risks and practical difficulties, in particular operational interference, as the exploitation of liquid hydrocarbons and natural gas often involves the use of shared infrastructure and equipment such as wells, pipelines and processing facilities. The coexistence of two separate contracts can lead to challenges relating to the management and use of these shared infrastructures.

Resource management may also be a difficulty in applying this provision, as the coexistence of two separate contracts may make it more complex to manage the resources present in the same perimeter. There may be overlaps or discrepancies in the estimation of reserves and production volumes, which can pose challenges for the planning and optimisation of operations.

Also, from a more practical point of view, cooperation between oil contract holders will be another challenge. These contract holders need to cooperate closely to ensure the smooth and efficient exploitation of hydrocarbons within the same perimeter. This requires close coordination, transparent exchanges of information and clear decision-making mechanisms, which can present a challenge in terms of communication and cooperation between the parties involved.

Of course, the co-existence of two separate oil contracts can also raise regulatory and tax issues. It may be necessary to establish clear rules to determine the regulatory and tax obligations of each contract holder, in order to avoid conflicts or inconsistencies.

[5] Article 7 of the Implementing Decree.

When a new oil contract is signed for the exploitation of natural gas on a perimeter that has already been awarded, it may be necessary to renegotiate certain terms of the initial contract. This may include adjustments to royalties, environmental obligations or cost and profit sharing conditions. Renegotiation can be complex and require mutual agreement between the government and the original oil contract holder. In all cases, careful management, effective coordination and open communication between the parties involved are essential to minimise the risks and maximise the potential benefits of the coexistence of two oil contracts on the same perimeter.

Finally, oil contract holders are subject to an annual control of their obligations, carried out jointly by the Ministry of Mines, Industry and Technological Development (hereinafter "**MINMIDT**") in charge of Hydrocarbons, a copy of which is sent to SNH at the same time. A report is produced, listing the obligations fulfilled and those still to be fulfilled towards the Republic of Cameroon. Holders are thus required to regularise their situation as soon as possible, if necessary. This monitoring ensures that the commitments made under the oil contracts are respected, and reinforces the responsibility of the licensees towards the State[6].

1.1.2. Transfer of oil contracts

The Implementing Decree deals with the transfer of oil contracts. To conclude this type of transaction, the holder must obtain prior approval from MINMIDT and the conclusion of an amendment when these rights result from the oil contract[7]. The application includes various information and documents relating to the various parties. Beneficiaries of the right of pre-emption[8] have the opportunity to negotiate with the holder of the oil contract; they are deemed to have waived the exercise of this right of pre-emption if they do not come forward within ninety (90) days of notification of the draft transfer. MINMIDT, after consultation with SNH, shall rule on the application for prior approval within ninety (90) days from the date of notification of the admissibility of the application[9].

1.1.3. Oil and gas prices

Under the Implementing Decree, the value of hydrocarbons produced under oil contracts is determined by the "market price". The hydrocarbons are sold in accordance with Incoterms and their value is established at the scheduled delivery point. For liquid hydrocarbons, the price is compared to North Sea Brent and must reflect the value on the international market. For gaseous hydrocarbons, prices vary according to destination and are approved for the domestic market. Joint commissions set quarterly prices for liquid hydrocarbons.

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[6] *Ibid.*

[7] Article 19 of the Petroleum Code.

[8] In particular, the State or any public body which is a co-owner shall have priority, followed by the other co-owners of the oil contract in accordance with the provisions of Article 22 of the Petroleum Code.

[9] Articles 39 et seq. of the Implementing Decree.

In the event of disagreement, a provisional price may be applied. Disputes can be resolved by an expert[10].

The setting of quarterly prices by joint committees may be seen as a measure to balance the interests of the various stakeholders. However, it is important to ensure that these committees are independent, transparent and representative of the industry as a whole to avoid any favouritism or imbalance.

1.1.4. Local content

The Petroleum Code defines local content as a set of activities of the Cameroonian petroleum industry focused on the development of local capacities, the use of local human and material resources, technology transfer, the use of local industrial and service companies and the creation of measurable added value for the local economy.

The Implementing Decree specifies the details of local content in the oil sector in Cameroon. It covers the development of human resources, technology transfer and the use of local companies and services. Oil contracts must include stipulations concerning the employment of nationals, training, technology transfer and the use of local companies. Monitoring and evaluation measures are provided for to ensure their implementation. Holders of oil contracts must give priority to employing Cameroonians, set up training programmes, collaborate on technology transfer and favour Cameroonian companies. MINMIDT and SNH are supervising these measures in collaboration with the administrations concerned[11].

The objective of promoting technology transfer is crucial to fostering the country's industrial development and long-term competitiveness. However, it is essential to ensure that the provisions concerning technology transfer are clear, binding and guarantee equitable sharing of knowledge and technology between foreign and domestic partners.

1.1.5. The change in oil regime

The change in the oil regime modifies the contractual and regulatory framework between the government and oil companies. Motivated by various economic factors, it requires the renegotiation of existing agreements to update the terms of the oil contract. The aim is to balance the benefits between the parties. Under the Implementing Decree, companies may request a change of regime by complying with their contractual obligations and winding up the previous regime. The change request is submitted to MINMIDT and SNH. It includes information on the activities, investments, production and reserves of the requesting company. Contract offers are negotiated by the Permanent Commission on behalf of the State[12].

[10] Articles 113 et seq. of the Implementing Decree.
[11] Articles 153 et seq. of the Implementing Decree.
[12] Articles 163 et seq. of the Implementing Decree.

1.2. Authorisations

The legislator has established five (05) main authorisations in the upstream oil sector. These are: prospecting authorisation, research authorisation, provisional operating authorisation, operating authorisation and domestic transport authorisation.

1.2.1. Prospecting authorisation

According to the Petroleum Code, the hydrocarbon prospecting licence[13] does not constitute a hydrocarbon mining title and is neither assignable nor transferable. It is granted to a natural or legal person by an order of the MINMIDT, which sets out the conditions, following technical advice from SNH. The prospecting licence gives its beneficiary the non-exclusive right to carry out preliminary prospecting work within a defined area. It does not constitute a hydrocarbon title[14].

The application for authorisation to prospect for oil must be submitted to SNH, in return for an acknowledgement of receipt. The applicant must provide precise information, such as the coordinates and surface area of the desired prospecting perimeter, as well as a map detailing the boundaries of the area. The application must also include the duration, programme and timetable of the planned exploration work, taking into account environmental concerns. From an administrative point of view, the applicant must provide proof of previous experience and financial capacity, include a receipt for payment of the required fees and provide detailed information if the applicant is a legal entity. The Implementing Decree specifies the terms and conditions for granting authorisation, which has an initial term of two (02) years with the possibility of renewal. The authorisation is notified by the Minister within fifteen (15) days and recorded in the Special Hydrocarbons Register. In the event of negotiations for an oil contract, the authorisation lapses unless extended to complete the work in progress. The licence holder must communicate the results of the work and may apply for renewal of the licence, providing evidence that it has fulfilled its commitments. Renewal is granted following a favourable opinion from SNH, and the applicant is notified within fifteen (15) days of the signing of the order[15].

[13]Prospecting is defined here as the preliminary activities of prospecting for and detecting indications of hydrocarbons, in particular by the use of geological, geophysical or geochemical methods, excluding drilling to a depth of more than three hundred (300) metres.

[14] Hydrocarbon exploration permit or concession attached to a concession contract.

[15] Articles 8 et seq. of the Implementing Decree.

1.2.2. Research licences and provisional operating licences

1.2.2.1. Research authorisation

In terms of hydrocarbons, research, also known as exploration, refers to detailed prospecting activities, including exploratory drilling aimed at discovering commercially exploitable hydrocarbon deposits, as well as appraisal activities, the delimitation of a presumed commercial hydrocarbon discovery and the abandonment of exploration wells. Authorisation to explore for hydrocarbons is a legal instrument linked to a petroleum contract and may take two distinct forms: a hydrocarbon exploration permit for concession contracts, and an exclusive exploration authorisation for production sharing contracts or risk-based service contracts[16]. This authorisation is granted by decree of the President of the Republic. However, the signing of the oil contract immediately constitutes the granting of the exploration licence, which is then formalised by a presidential decree confirming the granting of the licence.

The exploration licence gives the licence holder the exclusive right to undertake, at its own risk and expense, all hydrocarbon exploration work within the defined perimeter. The Implementing Decree sets out various procedures relating to the exploration licence, namely: the application for an exploration licence, the examination of the application, the granting of the licence, its renewal and the extension of its validity. The procedure for applying for, examining, granting and renewing a hydrocarbon exploration licence comprises a number of stages and requirements[17].

- Application for research authorisation

The application is submitted to MINMIDT, together with various information and documents, such as details of the applicant company, proof of technical and financial competence, documents justifying experience in environmental protection, details of the perimeter applied for, a detailed programme of the research work envisaged and financial guarantees.

- Processing and granting the application

SNH examines the application, may request corrections or additions, and conducts investigations to assess the moral, technical and financial guarantees offered by the applicant company. Once formally deemed admissible, the application is notified to the applicant company and forwarded to MINMIDT. The Minister examines the application and, if he receives a favourable opinion from SNH, takes a decision within a maximum of three (03) months. Research authorisation is granted by presidential decree.

[16] Article 30 of the Petroleum Code.

[17] Articles 15 et seq. of the Implementing Decree.

- Renewal of research authorisation

The authorisation holder may apply to renew the authorisation up to two (02) times, for a maximum period of two (02) years for each renewal period.

The renewal application must be submitted to MINMIDT, together with proof that the commitments have been fulfilled, the research areas requested, the work carried out and its results, and supporting documents for any changes to the company's articles of association or legal form. The Minister examines the application and takes a decision within a maximum of three (03) months of receipt of the application. Renewal of the authorisation is granted by presidential decree.

- Extension of time limit

The licence holder may apply for an extension of the research licence within six (06) months of its expiry. The request must be accompanied by a report detailing the work still to be carried out, the reasons justifying the request and the desired duration of the extension. MINMIDT examines the application and takes a decision within a maximum of two (02) months of receipt of the application. The extension of the authorisation is granted by presidential decree, for a maximum period of twelve (12) months for liquid hydrocarbons and twenty-four (24) months for natural gas and production, the corresponding budget and the method of financing envisaged. This plan includes a detailed estimate of operating costs, a precise drilling programme, the forecast production profile, the natural gas recovery plan, the schemes, the development schedule, the safety measures, the development scenarios, the provisions for abandoning the deposits, the environmental and social compliance certificate, information on the operator, the technical and financial capacities, proposals for local content, technology transfer and sustainable development, training and integration programmes for local companies, as well as other documents required by the oil contract. A receipt for payment of fixed duties must also be included.

1.2.2.2. Provisional authorisation to operate

During the period of validity of a research authorisation, the holder may apply for a provisional authorisation to operate, granted by decree of the President of the Republic. However, this provisional authorisation does not have the effect of extending the period of validity of the exploration authorisation.

The provisional authorisation to exploit confers on the holder the right to carry out extended production tests and/or to exploit, on a provisional basis, the producing wells for a maximum period of two (02) years. During this period, the licensee is required to continue the delineation and evaluation of the commercially exploitable nature of the deposit concerned, in accordance with the provisions of Article 32 and the contractual provisions[18].

[18] Article 39 of the Petroleum Code.

The holder of an exploration licence may therefore apply for a provisional operating licence for a hydrocarbon discovery that is in the process of being tested for production.

The application for a provisional authorisation to operate must be submitted to MINMIDT, with a copy to SNH, including the required information and a receipt for payment of the fixed fees.

SNH checks the application and then gives its opinion. If the application is admissible, it is forwarded to the Minister for a decision within two (02) months. Provisional authorisation to operate is granted by presidential decree for a maximum non-renewable period of two (02) years. It may be extended to new wells, subject to a favourable opinion from SNH and the validity of the research authorisation.

If the exploration licence expires, the provisional authorisation to operate lapses, unless prior agreement has been reached on the development of the deposit and an application to operate has been submitted. It may also be withdrawn if the work obligations are not met. Withdrawal of the exploration licence automatically entails withdrawal of the corresponding provisional operating licence.

1.2.3. Operating licence

Under the Petroleum Code, an authorisation to exploit hydrocarbons is a petroleum title which, when attached to a petroleum contract, is either an exploitation concession in the case of a concession contract, or an exclusive exploitation authorisation in the case of a production sharing contract or a risk services contract. We will dwell here on the procedures for applying for this authorisation, and its renewal[19].

- The request

The Implementing Decree sets out the essential requirements for applying for an operating licence. The application must be filed with MINMIDT, with a copy sent to SNH. It must contain the various information and documents required. These include, in particular, the coordinates and area of the exploitation perimeter, a detailed topographical map, a full discovery report with technical and economic data, an in-depth economic study of the development project, a detailed development and production plan, information on the operator, the holder's technical and financial capabilities, proposals regarding facilities, investments, costs and revenues, local content and sustainable development initiatives, training and integration programmes for local companies, as well as other documents required by the oil contract and a receipt for payment of fixed fees[20].

[19] Article 40 of the Petroleum Code

[20] Articles 26 et seq. of the Implementing Decree.

- Renewal of authorisation

Renewal of an operating licence must be requested from MINMIDT within three (03) years of its expiry.

The renewal application must be accompanied by an updated file including information on investments made, production profiles, existing infrastructure, remaining reserves, local content, technology transfer, abandonment plan, as well as a receipt proving payment of the mandatory fixed fees.

The application may be amended or supplemented at SNH's request. Renewal of the authorisation is decided by MINMIDT, after a favourable technical opinion, and is then approved by decree of the President of the Republic for a maximum period of ten (10) years. If the licence holder has not commenced exploitation activities within three (03) years of the licence being granted, or has suspended work for more than six (06) months, the licence may be withdrawn by the State in accordance with the provisions of the Petroleum Code, without entitlement to compensation[21].

1.2.4. Domestic transport authorisation

A domestic transport authorisation is an approval issued to any holder of an operating licence to transport hydrocarbons produced from its operations by pipeline or any other means, from production facilities to processing or transformation plants or to an export terminal. Certain terms and conditions relating to this authorisation should be outlined, including how to apply for and obtain it[22].

The application for a domestic transport authorisation is submitted by the holder of the operating licence to MINMIDT, in agreement with SNH[23]. The application file must include detailed information on the planned construction of the pipelines and ancillary transport facilities. This includes the planned route, construction characteristics, scale drawings, the construction programme, the economic and financial viability study, the cost estimate, the proposed tariff, connection information, the environmental and social compliance certificate, and a receipt for payment of the fixed charges.

If the route crosses external territories or is connected to external pipelines and installations, additional documents are required. These may include authorisations, contracts and a letter of intent from potential partners.

Authorisation for domestic transport is granted by decree of the President of the Republic, approving the construction project and declaring it to be in the public interest. The Implementing Decree includes provisions concerning the validity of the authorisation.

[21] Article 29 of the Implementing Decree.
[22] Articles 30 et seq. of the Implementing Decree.
[23] Article 49 of the Petroleum Code.

Once the authorisation has been granted, MINMIDT refers the matter to the Minister of Lands, Cadastre and Land Affairs to obtain the necessary authorisations for the construction of the facility. The transport authorisation may be transferred to third parties under certain conditions, with the approval of SNH and MINMDT, in accordance with the procedures specified in the Petroleum Code.

1.3. Incentives

The State, through SNH, the body responsible for managing its interests in the petroleum sector, may take appropriate incentives to relaunch hydrocarbon exploration, exploitation and production activities throughout the national mining estate, in exceptional circumstances. These incentives are designed in particular to encourage exploration in areas that are difficult to access on land or in the deep sea beyond 200 metres, as well as the implementation of tertiary recovery programmes to increase the productivity of deposits. In addition, in the event of a significant drop in investment in the upstream oil sector, incentives may also be introduced[24] .

In accordance with the Petroleum Code, holders of oil contracts that are in good standing with the State and comply with the laws and regulations in force may benefit from incentives in exceptional circumstances. Oil companies that have the required technical and financial capacity and that have sound investment projects aimed at sustainably increasing national oil or gas production may also benefit from these measures[25] .

These companies must submit an application or offer for an oil contract to MINMDT and SNH, providing details of their investment programme, forecast production profile, business model and justification for the incentives requested.

Once an application or bid has been submitted, SNH has three (03) months to determine whether it is admissible. If they are deemed admissible, they are forwarded to the Standing Committee, which takes the necessary steps to conclude an oil contract with the State. Incentives are granted to oil companies by means of an amendment to the existing contract or a new contract.

Renewal of an operating licence may lead to renegotiation of the economic terms of the oil contract and the granting of incentives, at the discretion of the State. However, this is subject to compliance with contractual commitments, the submission of a development and operating plan, the ability to meet the criteria for the granting of incentives, and the provision of the required information to the State. The contract or amendment to the petroleum contract comes into force after the initial period of validity of the operating licence has expired, allowing the holder to continue its activities pending the signing of the decree renewing the licence.

[24] Article 128 of the Petroleum Code.

[25] Article 159 of the Implementing Decree.

2. OIL AND GAS OPERATIONS

Broadly speaking, oil and gas operations refers to the many systems and processes that practitioners in the petroleum sector use on a daily basis to manage their activities. These include systems that contribute to increasing well productivity, assessing financial and operational performance, managing assets, and maintaining health and safety. In the second part of our analysis, we will focus on the provisions of the Implementing Decree relating to petroleum operations, namely: (2.1) relations with landowners; (2.2) petroleum operations; (2.3) the tax, customs and exchange regime; administrative supervision; and (2.4) criminal provisions.

2.1. Relations with landowners

Before a holder of a petroleum authorisation or contract occupies any land intended for petroleum operations, it is imperative that a request for a land survey be submitted to MINMIDT, with a copy sent to SNH at the same time[26].

Once the request has been submitted, an investigation is carried out by the Investigation Commission, which has six (06) months to submit its report.

The land concerned by the land transactions, following their incorporation or expropriation, must first either be registered in the name of the State of Cameroon or be incorporated into the public domain[27]artificial[28]. The right to use and occupy the land is granted by Prime Ministerial decree to the holders of the oil licence or contract. Likewise, the payment of any expenses that may be incurred by land in the national or public domain affected by these measures, as well as compensation for private property affected, shall be carried out by decree of the Prime Minister, in accordance with the land and property legislation in force.

It is important to specify that not all land can be freely occupied for oil operations, there are parcels classified as protection areas. The protection areas as provided for in Decree No. 2000-465-17 of 30 July 2000 setting out the terms and conditions for the application of Law No. 99-013 on the Petroleum Code (hereinafter referred to as the "**Old Decree**") remain unchanged.

[26] Article 58 of the Implementing Decree.

[27] The artificial public domain refers to areas which, although initially private, have been developed or assigned to a specific public use by an administrative or legislative decision. This means land that has been transformed into a public space through works, official decisions or allocation for public use.

[28] Article 59 of the Implementing Decree.

Land located less than fifty (50) metres from all religious or government buildings or buildings used for public services, land located less than one thousand (1,000) metres from a land border or an airport, and land classified as sites and reserves by the State, are classified as protected areas within which oil operations may be subject to certain conditions or prohibited without the possibility of claiming compensation[29].

We understand that oil operations within the protection perimeters may be subject to certain conditions or even prohibited, with no possibility of claiming compensation. This provision raises concerns about the rights of oil contract holders and the predictability of regulations.

It is important to establish clear and transparent criteria for the imposition of such conditions or prohibitions, in order to ensure fair application and prevent any unjustified infringement of the rights of the parties concerned.

In addition, the protection perimeters are established by decree of the Prime Minister, who defines in due course the technical conditions that must be complied with on such land. However, compliance with these conditions does not release the holder of the oil contract from its obligation to pay compensation[30]. In the case of private land, being subject to right-of-way easements entitles the holder to compensation fixed by amicable agreement between the parties or by MINMIDT in the event of disagreement between the parties[31].

2.2. Oil operations

The Petroleum Code defines oil operations as all activities relating to prospecting, exploration, exploitation, transport, storage and processing of hydrocarbons in the upstream petroleum sector, excluding refining, storage and distribution of petroleum and gas products, which fall within the downstream petroleum sector[32]. When carrying out petroleum activities, holders of oil contracts and other titles are required to comply with the obligations imposed on them by the Implementing Decree.

[29] Article 60 of the Implementing Decree.
[30] Article 62 of the Implementing Decree.
[31] Article 65 of the Implementing Decree.
[32] Article 2 of the Petroleum Code.

2.2.1. The obligation of oil and other contract holders

Oil operations must be conducted diligently and in accordance with the best practices of the international oil industry. To this end, holders are required to[33] : ensure that everything used in oil operations remains in good condition and complies with accepted standards in the petroleum industry; ensure rational use of the resources made available to them on the contractual perimeter; avoid and prevent damage to formations in operation; ensure that discovered hydrocarbons do not escape or go to waste; monitor reservoirs during operation; ensure that storage facilities comply with standards and practices in use in the petroleum industry; set up a system for disposing of hydrocarbons used in petroleum operations; place rejects and waste in receptacles built for this purpose and dispose of them in accordance with the standards and practices accepted in the international petroleum industry; ensure that subcontractors in their respective fields comply with the standards and practices generally accepted in the international petroleum industry; and ensure optimum use of local human resources.

With the exception of the obligation to ensure optimal use of local human resources, all the other obligations set out in the Implementing Decree are in line with those set out in the Old Decree[34].

The Implementing Decree provides for the withdrawal of the authorisation and/or the forfeiture of the petroleum contract (without prejudice to all administrative, judicial and legal sanctions) in the event of non-compliance with the holder's obligations, following a formal notice sent to the holder which has remained unsuccessful[35]. The formal notice is sent by MINMIDT following a seizure by SNH. Withdrawal of the authorisation or forfeiture of the petroleum contract is ordered by MINMIDT decree.

In addition to the obligations mentioned above, there are other obligations relating to notifications, reports and works programmes. These include[36]:

- the obligation to inform MINMIDT and SNH forty-eight (48) hours before the start or resumption of oil operations;
- the obligation to provide MINMIDT and SNH with daily drilling reports describing the progress and results of said operations, as well as the various logging data recorded during drilling;

[33] Article 67 of the Implementing Decree.
[34] Article 49 of the Old Decree.
[35] Article 67 of the Implementing Decree.
[36] Articles 68 to 75 of the Implementing Decree.

- the obligation to provide MINMIDT and SNH with periodic reports (monthly, quarterly, half-yearly and/or annually) from the start of oil operations, in accordance with the schedule specified in the oil contract;
- the obligation to retain, during exploration operations, copies of digital tapes of data acquired from geological, geochemical, geophysical, engineering and drilling work carried out as part of a programme of work duly approved in accordance with the stipulations of the petroleum contract;
- the obligation to submit to MINMIDT and SNH the annual works programme and corresponding budget no later than thirty (30) days before the start of each calendar year;
- the obligation to submit to MINMIDT and SNH, for approval, an annual production forecast report no later than thirty (30) days before the start of each calendar year;
- the obligation to submit an annual production report covering the previous calendar year to MINMIDT and SNH by 31 March each year at the latest;
- the obligation to keep a register of the production, sale, storage and export of hydrocarbons during the exploitation phase.

It is important to note that the obligation to provide monthly, quarterly, half-yearly and/or annual reports as set out in the Implementing Decree is different from what was set out in the Old Decree.

Indeed, the Old Decree provided for the transmission of a report covering a period of six (06) months or three (03) months as the case may be, in other words half-yearly or quarterly reports[37] .

The deadline of forty-five (45) days initially set by the former Decree[38] for submitting for review the annual works programme and budget as well as an annual forecast report is reduced by the Implementing Decree to thirty (30) days.

2.2.2. Supplying the internal market

Supplying the local market appears here as an additional obligation, but is dealt with separately. In accordance with the Petroleum Code[39] , Article 76 of the Implementing Decree provides that when MINMIDT makes a request to satisfy the needs of the Cameroonian domestic market, the holders of petroleum contracts must, as a matter of priority, sell to the State or to SNH a share of the hydrocarbon production to which it is entitled. This is to meet the needs of the Cameroonian domestic market as a priority.

[37] Article 53 of the Old Decree.
[38] Articles 55 and 56 of the Old Decree.
[39] Article 81(1) of the Petroleum Code.

As part of this obligation, a notification must be made by MINMIDT in agreement with SNH specifying the quantities required to ensure supply to the domestic market for the next six (06) months.

Furthermore, the quantity of hydrocarbons must not exceed the total needs of the Cameroonian domestic market multiplied by a fraction, as well as the total production of hydrocarbons accruing to the Republic of Cameroon.

Lastly, the price of this sale is in line with the price set out in the Implementing Decree. In order to meet their obligations to supply the needs of the domestic market, licensees may import hydrocarbons[40].

2.2.3. Environmental protection and safety measures

To ensure optimum protection of the environment, the Implementing Decree imposes mandatory standards and practices on oil contract holders in line with the standards and practices in force in the international oil industry[41].

Otherwise known as mandatory measures, the mandatory standards and practices imposed on licensees are as follows: taking out and renewing insurance policies covering damage to persons and property resulting from oil operations carried out by the contractor; reducing to a strict minimum damage caused to the environment within the contractual perimeter as a result of oil operations; setting up a rigorous system for preventing and controlling pollution resulting from oil operations; obtaining the prior authorisations required by the laws and regulations in force and providing the required environmental and social impact studies; treating, eliminating and controlling emissions of toxic substances from oil operations that are likely to cause damage to people, property and the environment; installing a system for collecting waste and used equipment from oil operations; safeguarding and preserving archaeological and tourist sites and wildlife reserves.

To protect the environment, a committee to protect against hydrocarbon contamination has been set up, as originally provided for in the former Decree[42].

In addition to these compulsory measures, the following obligations can be cited in the context of environmental protection:

- an environmental and social impact assessment to be carried out at the expense of the holder of an oil contract for all hydrocarbon exploration, production and transportation projects;

[40] Article 78 of the Implementing Decree.
[41] Article 80 of the Implementing Decree.
[42] Article 83 of the Implementing Decree.

- the inclusion in the environmental and social impact assessment report of an environmental and social management plan containing measures to be followed in order to eliminate, avoid, minimise or compensate for damage to the environment;
- compliance with environmental protection standards and measures by employees and subcontractors of the oil contract holder;

Contrary to the provisions of the previous Decree, oil contract holders are no longer free to choose the experts who will carry out the study[43]. The Implementing Decree therefore gives priority to Cameroonian consultants for the environmental and social impact study[44].

2.2.4. Oil documentation

In the context of oil operations, the holders of oil contracts are required to keep and update the archives relating to the contractual perimeters.

By agreement with SNH or MINMIDT, these records are kept at the head office of the contract holders in Cameroon and must contain specific information. Although no time limit is imposed, a copy of these archived documents must be sent to SNH[45].

In addition, oil contract holders are required to keep updated registers of petroleum operations containing specific information at their registered offices in Cameroon[46]. Similarly, a copy of each register must be filed with SNH by 15 January of the following year at the latest.

All data generated during oil operations are the exclusive property of the State of Cameroon. As such, holders are obliged to obtain the prior written agreement of MINMIDT, after receiving the assent of SNH, prior to any disclosure of documents to third parties, survey reports and other information falling within the scope of petroleum documentation[47].

This information is considered confidential and may not be divulged to a third party by the State or the licensee until the perimeter to which it relates has been handed over or, in the absence of such handover, until the end of the confidentiality period.

In addition, the obligation of confidentiality does not apply to information that must be disclosed in accordance with the legislative or regulatory provisions in force or by virtue of a court decision[48].

[43] Article 68 of the Old Decree.
[44] Article 88 of the Implementing Decree.
[45] Article 136 of the Implementing Decree.
[46] Article 137 of the Implementing Decree.
[47] Articles 138 to 140 of the Implementing Decree.
[48] Article 141 of the Implementing Decree.

In the past, the duration of the obligation of confidentiality was limited to two (02) years after the expiry of the authorisation for exploration authorisations and it was also provided that the duration of the obligation of confidentiality was coextensive with the duration of the oil contract concerned[49]. The Implementing Decree sets out precise deadlines, as indicated below. However, it should be noted that in the event of withdrawal or renunciation, these data, documents and information become accessible to the national public domain[50] :

- Five (05) years for seismic data and ten (10) years for well data generated as part of oil operations;
- Three (03) years for documents and other information generated in connection with oil operations in the national oil and gas sector;
- Two (02) years in the case of a prospecting authorisation.

2.2.5. The unitisation agreement

The Petroleum Code defines unitisation as a process leading to the exploitation, in the form of a single entity, of a hydrocarbon deposit extending over several contractual perimeters, subject to separate petroleum contracts within Cameroonian territory, or involving a State bordering Cameroon. Oil contract holders may enter into unitisation agreements where hydrocarbon deposits extend over several contract areas. This is with a view to exploiting these deposits under the best possible technical and economic conditions.

All unitisation projects must be notified to MINMIDT and SNH by the holders involved in order to obtain a decision on the admissibility of their request within fifteen (15) days.

For cross-border deposits, the unitisation agreement must be submitted for approval to the competent authorities of each State[51]. This approval is subject to the conditions and procedure laid down by the legislation in force in each country.

[49] Article 109 of the Old Decree.
[50] Article 143 of the Implementing Decree.
[51] Article 149 of the Implementing Decree.

2.2.6. Insurance for oil operations

Unlike the Old Decree, the Implementing Decree requires oil contract holders to take out the insurance policies required for oil operations with local insurance companies[52] in accordance with the Petroleum Code.

Initially, contractors and subcontractors were required to take out insurance policies without specifying the quality of the insurance companies[53].

The insurance policies must comply with the laws and regulations in force and with generally accepted standards and practices in the international oil industry. In addition, they must include the State as an additional insured and contain a subrogation clause in favour of the State. In addition, these insurance policies, duly underwritten, must be sent, with receipts, to MINMIDT and SNH before 15 January each year.

The fact that the decree contains provisions relating to the taking out and renewal of insurance policies to cover damage to persons and property resulting from oil operations are important measures. However, it is necessary to ensure that the levels of cover and the terms and conditions of insurance policies are adequate to deal with the specific risks associated with oil operations. Regular assessment of the adequacy of insurance cover is essential to ensure adequate protection in the event of damage.

2.3. Tax, customs and foreign exchange regimes; administrative supervision

2.3.1. Tax system

The Implementing Decree clarifies the tax regime for companies involved in petroleum operations, in accordance with the provisions of the Petroleum Code. The rate of corporation tax applicable to income from exploration and exploitation activities is set at 35%[54] as provided for in the Petroleum Code.

If different substances are used or if two or more oil contracts are superimposed, each oil contract is accounted for separately and is subject to corporation tax.

[52] Article 150 of the Implementing Decree.
[53] Article 117 of the Old Decree.
[54] Article 124 of the Implementing Decree.

It should also be remembered that the Finance Act 2022 introduced an exemption from special income tax (TSR) for holders of oil contracts and their subcontractors in the research phase. This is in fact an exemption in principle, which is only allowed if the following cumulative conditions are met:

- Foreign service providers do not have a permanent establishment in Cameroon;

- These services are provided at cost price (invoiced without margin) and the burden of proof lies with the service provider;

- These services are provided during the research and development phase (the local oil company must hold a research permit or certify that it is in the development phase).

For the record, the same service providers were previously subject to TSR at the reduced rate of 5%. The aim of this measure seems to be to bring tax law into line with the provisions of the Petroleum Code on TSR.

2.3.2. Customs procedure

The Implementing Decree maintains the possibility for licensees and their subcontractors to import into Cameroon the materials and equipment needed to carry out petroleum operations[55]. This equipment is admissible free of all duties and taxes, except for remuneration for services. In this case, the equipment may not be transferred or sold to third parties without prior settlement of subsequent duties and taxes or prior authorisation from the tax authorities.

If these imports are to be re-exported shortly after use, they will benefit from the normal temporary admission customs procedure if they are intended for exploration and research activities, and from the special temporary admission procedure if they are to be used on sites during the exploitation phase.

This scheme allows certain goods to be imported duty and tax free for a specific purpose and to be re-exported within a specific period of time, without having undergone any changes, with the exception of their normal depreciation as a result of the use made of them.

The authorisation for licensees and their subcontractors to import materials and equipment free of duties and taxes, with the exception of payments for services, may be considered a financial advantage. This can facilitate the supply of materials needed for oil operations.

[55] Article 125 of the Implementing Decree.

However, it is important to ensure that these tax advantages do not create competitive disparities between players in the sector and do not hinder the development of local industry.

Although this provision of the Implementing Decree focuses on fiscal and customs aspects, it is important to note that importing materials and equipment for oil operations can have significant environmental implications. It is essential to ensure that imported equipment complies with current environmental standards and contributes to the protection of the environment throughout the oil operations cycle.

2.3.3. Foreign exchange regulations

The foreign exchange regulations applicable to oil operations mention the obligation of oil contract holders to comply with CEMAC foreign exchange regulations.

In addition, they are required to collaborate and cooperate closely with the Bank of Central African States (hereinafter the "**BEAC**"), in order to allow full traceability of all transfer and foreign exchange operations linked to oil operations and to optimise the repatriation to Cameroon of proceeds from their activities on national territory[56].

2.3.4. Administrative surveillance system

Technical and administrative supervision, as well as economic, accounting and financial control of petroleum operations, is carried out by MINMIDT in collaboration with SNH, while authorised and/or sworn agents supervise prospecting, research, exploitation and transport of hydrocarbons[57].

In addition, these authorised agents have various powers and duties, which they exercise only after identifying themselves to the operator or local operations manager. They are also required to comply with the rules and procedures in force[58].

2.4. Criminal provisions

Failure to comply with the obligations relating to petroleum operations as detailed in this analysis exposes the author to sanctions.

[56] Regulation n°01-CEMAC-UMAC-CM on the implementation of certain provisions of the foreign exchange regulations by resident extractive companies.
[57] Articles 127 and 128 of the Implementing Decree.
[58]Articles 130 to 132 of the Implementing Decree.

It is envisaged that these sanctions will only apply to players in the oil sector following a specific procedure, as detailed below.

A report drawn up by authorised and/or sworn agents, in the form of an official report or other document in lieu thereof containing precise information[59] must be sent to MINMIDT and SNH attesting to the failings of the holder concerned within ten (10) days.

Following this observation, MINMIDT or SNH shall give the holder concerned formal notice to remedy the breaches observed within a period of three (03) months, subject to the penalties set out in the formal notice sent by bailiff, if applicable.

If the holder concerned fails to comply within the time limit set (in the event of formal notice remaining unsuccessful), sanctions will be imposed by MINMIDT or SNH, such as[60] : payment of the fines set in accordance with the provisions of the Petroleum Code; or withdrawal of the authorisation and/or forfeiture of the petroleum contract under which the holder carries out its activities. This is without prejudice to other sanctions provided for by the laws and other regulations in force.

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[59] Article 165 of the Implementing Decree.
[60] Article 131 of the Petroleum Code.