

THAI E&P SECTOR**Current Developments****• 20th Bid Round for Petroleum Concessions**

The 20th bid round was concluded in May 2008. As of March 2011, 28 petroleum concessions for 34 blocks had been approved, of which 22 petroleum concessions for 24 blocks have been signed.

• New Regulator for energy business

On 11 December 2007, the Energy Industry Act became law following its publication in the Government Gazette.

This Act establishes a new regulatory regime for electricity and natural gas business. One of the purposes of the Act is to restructure the energy industry management by separating policy making, regulation and operating functions.

- The Energy Regulatory Board was established, comprising one Chairman and six other members.
- The Energy Regulatory Office was established, as a state agency with status of juristic person, and under the supervision of the Board.

• Corporatisation of PTT upheld by Administrative Court

In September 1998, the Thai government approved a master plan for privatising and restructuring state enterprises, including policies to liberalise competition, create fairness and increase efficiency in supplying energy to consumers. In December 1999, the Corporatisation Act came into force, which provides a process for the corporatisation of state enterprises (conversion from statutory corporations to limited companies), to be initially 100% owned by the MoF.

EGAT

EGAT was corporatised on 24 June 2005 (converted from a statutory corporation to public limited company 100% owned by the MoF). In March 2006, the Administrative Court reversed the corporatisation of EGAT.

PTT

On 1 October 2001, the Petroleum Authority of Thailand (“PTT”) was corporatised, by conversion to PTT Public Company Limited (“PTT Pcl”). Two Royal Decrees were published on 30 September 2001 to deal with issues requiring legislative solutions.

- The first Royal Decree prescribed that PTT Pcl has the powers, exemptions, special rights and protection as prescribed and granted by the law governing PTT. It also provided that certain assets of PTT Pcl are not subject to execution. In February 2007, this Royal Decree was amended: the grant of special powers, exemption and rights was withdrawn, and an interim regulatory body was established.

- The second Royal Decree prescribed that the Petroleum Authority of Thailand Act was repealed as of 1 October 2001.

An IPO was conducted in November 2001, and approximately 48.47% of the shares of PTT Pcl are now owned by the public.

In August 2006, a case was filed in the Administrative Court to revoke the two Royal Decrees establishing PTT pcl.

In December 2007, the Administrative Court upheld the two Royal Decrees, but required the transfer of certain assets to the Ministry of Finance, subject to a lease-back to be negotiated.

Oil and Gas Sector

- **Industry and Legislative History**

In 1971, Thailand promulgated the Petroleum Act (PA) and the Petroleum Income Tax Act (PITA). The PA established a concession system, and nine Ministerial Regulations were issued in 1971 dealing with major subjects under that act. The PITA established an income tax system applicable only to concessionaires, with tax rates between 50% and 60%. A tax rate of 50% was prescribed by Royal Decree.

The various changes in the PA and PITA have resulted in three different sets of terms being applicable to concessions of three different periods: pre-1982 (“Thailand I”), 1982 onshore (“Thailand II”), and 1989 (“Thailand III”), with provisions in the latter allowing prior concessionaires not yet in production to opt for the 1989 terms.

- **Administration**

The PA was administered by the Ministry of Industry through the Oil Fuels Division of the Department of Mineral Resources. Under the 2001 reorganisation plan, the Energy Ministry is responsible for administration of the PA. Most major decisions under the PA are made by an inter-ministerial Petroleum Committee established under Section 15 of the PA with the specific powers listed in its Section 16. The five present sub-committees of the Committee cover: natural gas pricing; negotiation of natural gas price; use of natural gas; applications for petroleum concessions; draft petroleum concessions and legal issues; matters under PA Sections 69 (immigration) and 70 (import of exempt goods); petroleum legislation amendments; development of overlapping areas; and subsidies for petroleum products.

The PITA is administered by the Ministry of Finance through the Revenue Department. Section 7 of the Department’s Investigation Division is responsible for concessionaires.

- **Concessions**

Although not expressly required by law, the Thai practice is to award concessions only following the publication of an international invitation, usually with at least 45-days’ notice. Applications are evaluated on a points system by the Petroleum Committee, which forwards its recommendations to the Cabinet for approval.

Most concession terms and conditions are prescribed in the PA and its regulations. The standard concession form was initially set out in 1972 in Regulation No. 4. In 1989, a new concession form was prescribed in Regulation No. 17. In practice, concession applicants are

rarely permitted to negotiate changes in the standard terms. As of June 2010, a new concession form is under review by the Council of State.

The Thai petroleum concession has been proven to provide a very stable foundation for investment in the oil and gas industry and downstream projects. No steps have been taken to change the current legal regime by adopting a production sharing regime, which is common in other countries in the region.

- **Petroleum Law Reform**

In 2007 the Petroleum Act (No. 6) and the Petroleum Income Tax Act (No. 6) were enacted and amended the PA and the PITA. However, the fiscal terms, as modified for the 20th bidding round, remain largely unchanged, and are set forth in Table 1.

- Purposes of amendments in PA (No. 6) include:
 - Revisions more suitable to small fields and complex geology, marginal fields and fields having declining production.
 - Provisions to clarify environmental management.
 - Provisions to reduce and streamline steps for approvals.
 - Provisions to better compete with other countries for investors.

As of March 2011, four draft Ministerial Regulations are under review by the Council of State, and are expected to be announced within 2010:

- New MR (consolidating 3 & 16): rules, procedures and conditions for applying for petroleum concessions
- New MR (consolidating 4 & 17): form of petroleum concession
- New MR (consolidating 5 & 12): reporting requirements; standards of operations
- New MR (consolidating 6 & 11): safety zones

- **Overlapping Area (Thailand/Cambodia)**

Since 1972, a significant area in the Gulf of Thailand has been off-limits to the petroleum exploration industry due to a dispute over maritime boundaries between Thailand and Cambodia. The area is believed to include commercial fields similar to the Thailand sector of the Gulf of Thailand. Interest in the area has grown since discoveries made by Chevron in the Cambodian offshore in 2004.

A memorandum of understanding (MOU) was signed on 18 June 2001 that divided the overlapping area up into two portions: one north of 11 degrees North Latitude is to be delimited, and the remainder is to be exploited under a joint petroleum development agreement. A committee and working groups were set up, consisting of:

- joint technical committee
- joint technical sub-committee
- working group on the JDA solution for OCA (5th meeting took place 5-6 February 2007 in Sihanoukville).
- working group on the area to be delimited in OCA
- technical expert group.

A recent publication by the Petroleum Institute of Thailand indicated that a major impediment to the negotiations is the status of block nos. 5 & 6. These blocks occupy the portion of the overlapping claims area that is to be delimited under the 2001 MOU. This area is particularly

contentious due to Cambodia's claimed lateral boundary line, which is contrary to international maritime law.

Private talks between the governments were held occasionally during recent years, but have been discontinued due to a land border disputes surrounding the 11th century Khmer Preah Vihear temple.

- **JDA Pipeline Project**

In October 1999, PTT and Petronas signed a gas sales agreement with production sharing contractors and the Malaysia-Thailand Joint Development Authority in respect of Block A-18. A project company, TTM (Thailand), owned by PTT and Petronas was registered to construct and operate a pipeline to transport natural gas from the JDA to southern Thailand and northern Malaysia, and to build a gas separation plant in southern Thailand. The implementation of the project was delayed by the need to conduct public hearings and the opposition of certain local groups and NGOs. The construction of the pipeline and gas separation project commenced in 2003 and gas started flowing in 2005.

A second gas sales agreement in respect of Block B-17-01 in the JDA was signed on 16 June 2005, and the pipeline link Block A-18 to Arthit Field and the third gas pipeline to Central Thailand has been completed.

Websites for current information concerning the energy sector:

Bank of Thailand (BoT)	www.bot.or.th
Board of Investment (BOI)	www.boi.go.th
Department of Mineral Fuels (DMF)	www.dmf.go.th
Electricity Generating Authority of Thailand (EGAT)	www.egat.or.th
Energy Policy and Planning Office (EPPO)	www.eppo.go.th
Ministry of Energy (MoE)	www.energy.go.th
Ministry of Finance (MoF)	www.mof.go.th
Office of the Council of State	www.krisdika.go.th
Office of the Energy Regulatory Commission (ERC)	www.erc.or.th
Petroleum Institute of Thailand (PTIT)	www.ptit.org
PTT pcl	www.pttplc.com
Revenue Department	www.rd.go.th
Securities & Exchange Commission (SEC)	www.sec.or.th
Stock Exchange of Thailand (SET)	www.set.or.th

Table 1: Thailand III Terms (20th bid round, modified by PA (No. 6))

Eligibility	:	Concessionaire may be foreign or Thai company.
Area of blocks	:	Not exceeding 4,000 sq. km. (except deep water blocks). Special concessions not exceeding 200 sq. km., with relaxed royalty rates, may be issued for high-cost onshore fields.
Duration		
	<i>Exploration period</i>	: 6 years + 3-year renewal.
	<i>Production period</i>	: 20 years from end of exploration period + 10-year renewal. Commercial field test. Production plans and reports and government approval of amendments to plans required. Obligation to produce within 4 years, with possible deferrals of 2 years each. Government sole risk option: Exercisable after a 12-month negotiation period. If government does not proceed within 2 years, concessionaire may request return of the area. If government proceeds and realises profits, concessionaire will be reimbursed its costs. Concessionaire may elect to co-venture with government for a period of 3 years.
	<i>Relinquishments</i>	: 50% after 4 years. 25% after 6 years.
	<i>Reserved exploration area</i>	: 12.5% of initial area, up to 5 years after end of exploration period.
Economic obligations		
	<i>Work and expenditure</i>	: Fixed for each of first 3 years, and, later, for each of second 3 years. Excess may be carried forward. Modification possible with approval of the Minister. Bank guarantee may be required.
	<i>“Special benefits”</i>	: As proposed in concession application (e.g. bonuses, scholarships, grants to educational institutions, study tours, etc.).
	<i>“Special remuneratory benefit:</i>	: SRB is “windfall profits” tax, payable only in years concessionaire has “petroleum profit”. In calculating such profit (or loss), capital expenditure, operating costs and a special reduction (an expense “uplift”) for the year and petroleum loss carried forward indefinitely from prior years may be deducted. The “special reduction” is 35%. SRB is calculated by exploration block at following rates, subject to a ceiling of 75% of petroleum profit: Income per meter of well SRB Up to Baht 4,800.....zero Baht 4,800 to Baht 14,400....1% per each Baht 240 increment Baht 14,400 to Baht 33,600..1% per each Baht 960

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increment
 Over Baht 33,600.....1% per each Baht 3,840
 increment

To determine “income per meter of well”, first calculate annual petroleum profit and adjust for inflation and exchange rates; then calculate accumulated total meters of all wells drilled during the concession period. Income per meter of well equals adjusted annual petroleum profit divided by total depth of all wells + GSF. “GSF” means “geological stability factor”, which is fixed for each geological region and is at least 300,000 meters, higher in difficult drilling areas.

Royalty : Imposed at progressive rates:

<u>Monthly Sale VolumeRate</u>	
<u>(Barrel X 10³)</u>	
0 – 60.....	5.0%
60 – 150.....	6.25%
150 – 300.....	10.0%
300 – 600.....	12.5%
>600.....	15.0%

In deep water blocks, royalty is 70% of the above rates. Government has authority to fix lower rates in special situations.

Royalty in cash based on posted, realised or market price. Royalty in kind is volume equivalent in value to royalty paid in cash. Payable monthly. Royalty disputes to court, not international arbitration.

Income tax : 50% on profits (or 35% on profits plus 23.08% remittance tax, under Royal Decree). Payable semi-annually.
 Revenues, deductions and taxes for all “Thailand III” blocks of the same concessionaire may be consolidated. Other blocks of the same concessionaire must be consolidated separately.

Capital costs generally amortised over 5 to 10 years (accelerated depreciation permitted).
 Operating costs, royalties and SRB expensed.
 Revenues on crude oil sales based on realised price or, for exports, on the higher of realised or “tax reference” price, the latter being the posted price with a discount.
 Ten-year loss carryforward, no loss carryback.

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Pricing	
<i>Crude oil</i>	: Export sales on f.o.b. posted price fixed by concessionaire and agreed by government. Domestic sales, in absence of regular exports, on price not exceeding that of imported crude oil; otherwise, on average realised price of exports by all concessionaires.
<i>Natural gas</i>	: Negotiable.
Disposition of crude oil	
<i>Local market supply</i>	: Government may require supply to local market at domestic sales prices. First priority must be given to government at a domestic oil refinery.
<i>Exports</i>	: May be subject to ban or restriction under PA Section 61. (Currently none)
Disposition of natural	: In practice, gas must be sold to PTT at negotiated price, as it has a de facto monopoly on the internal transportation of natural gas.
Additional factors	: Office in Thailand. Employment and training of Thai nationals. Preference to local goods and services, including ships. Approval of employment of foreign nationals. Equipment becomes property of Thai government at end of production period. Exemption from customs duty and VAT on imports required for petroleum operations. No surface rentals, except for reserved exploration areas. No mandatory government participation.
Dispute	: Bangkok, unless otherwise agreed. Rules of International Court of Justice of 6 May 1946, as amended. [change in arbitration rules is pending] Royalty disputes to Thai court.
Transfers	: Qualifications of affiliated company transferees now to be scrutinised.
Confidentiality	: Confidentiality period for reports submitted by concessionaire ends 1 year after date of receipt.
Application to prior concessions	: Upon application and consent if concessionaire not yet in production.

Note: As of March 2011, four draft Ministerial Regulations are under review by the Council of State, including a revised form of petroleum concession.