



## Oil & Gas 2019

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## 1. What department/agency regulates oil and gas extraction - what are the main laws which apply?

The Supreme Council for Petroleum and Minerals (Petroleum Council) makes decisions on all oil and gas matters. The Ministry of Energy, Industry and Mineral Resources (MEIM) regulates all commercial activities related to trade in petroleum products, including their use, sale, transfer, storage, distribution, import and export (Article 3, Petroleum Products Trading Law). On the ground, all operational matters including exploration, construction and trading matters are handled by the 100% state owned oil and gas company Saudi Aramco.

## 2. Are there international laws those working in this jurisdiction need to consider?

- Issued on 28 March 2018
- The Decree amends most of the Income Tax Laws (ITL) on investments in natural gas, which were originally issued through Saudi Arabia Royal Decree No. M1/1425 in July 2004.
- The amendments include:
  - I. Cancelling the Natural Gas Investment Tax which was outlined in Chapter 10 (Articles 44-55).
  - II. Taxable activities of natural gas investment companies are now subject to Corporate Income Tax (CIT) at 20%, and not 30% under the old law.
  - III. People engaged in both production of oil and hydrocarbons and natural gas have to compute the tax bases of each of these activities independently and claim the related deductible expenses. Similarly, carried forward net operating losses of an activity can be offset against the same activity's taxable profit.

The Council of Ministers authorised trade in petroleum products, with state-priced products to be strictly used as fuel by industrial firms, while products sold at global rates will be used as feedstock.

Gas feedstock at competitive prices has turned Saudi Arabia into a major petrochemical producer.

The law has minimised subsidised consumption of petroleum products, by limiting subsidies and gradually removing them.

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## 3. What are the licensing procedures for carrying out different oil and gas extraction processes?

Licenses for industrial activities are issued by Saudi Arabian General Investment Authority (SAGIA). Oil and gas extraction are considered specialised activities where foreign investment is restricted.

However International oil companies can operate through joint ventures with Saudi Aramco in Saudi oil fields and refineries.

For bidding on Saudi Aramco procurement and contracting (EPC) contracts, or becoming a Saudi Aramco supplier, companies must first go through Saudi Aramco's extensive pre-qualification process.

Bidders should be ready to meet Saudi Aramco's In-Kingdom Total Value Add (IKTV) targets. IKTV program aims to double Saudi Aramco's domestic spending, from 35% of expenditures to 70% by 2021. This programme imposes localisation requirements which differ by contract and sector.

Approval from the Saudi Centre for Energy Efficiency and the Ministry of Energy, Industry and Mineral Resources are also required for oil and gas extraction processes.

## 4. Is there any appeal process if licenses are denied?

The right to appeal the denial or refusal of a license is outlined in the SAGIA Service Manual

- Rights of Applicant of Issuance of New Investment License (SAGIA Service Manual)
  - I. The right to respond the application of new license.
  - II. The right that the refusal of the new license be justified.
  - III. The right to appeal the refusal resolution before the Board of Grievances.

On a denial, entities will receive a receipt of the decision issued by the Board of Directors. The appeal must be made within 60 days of the date of receipt or acknowledgement of the decision.

After filing the appropriate paperwork, the letter of appeal must be authenticated by the Chamber of Commerce before being reviewed by the Board of Grievances. The letter contains justifications for appealing the decision and a company profile (contracts or projects carried out by the establishment previously).

## **5. Is a national partner or government body required to be involved?**

Yes, as foreign investment relating to the exploration, prospecting and production of petroleum substances is restricted by the Supreme Economic Council, who exclude these activities from foreign investment.

Saudi Aramco is independent of the Ministry of Energy, Industry and Mineral Resources (MEIM) and are responsible for all exploration, drilling and production activities in the Kingdom. Any foreign firm wishing to involve themselves with oil and gas extraction or production must partner with Aramco before obtaining proper licensing from SAGIA.

## **6. What checks/monitoring is carried out on extraction equipment?**

Equipment used for extraction is subject to inspection before they it is used. Inspection procedures differ based on the equipment, but all checks must be done in line with Aramco's Inspector Handbook and in line with the standards set by the Saudi Council of Engineers.

## **7. What checks/monitoring is carried out on extracted oil and gas?**

Extracted oil in Saudi Arabia is frequently monitored and subject to tests in line with regulations set out by the Saudi Standards, Metrology and Quality Organisation (SASO).

Common Oil and Gas Tests:

- API Gravity, Density, Relative Density of crude oil.
- Sediment Content, Water Content.
- Sulfur Content.
- Carbon Residue, CHN ASTM Testing.
- Chloride and Chlorides Content.
- Mercury Detection (Trace Levels).
- Metals in Crude Oil analysis.
- Methanol Content.
- Pour Point, Vapor Pressure.
- Salt Content.
- Sediment by Membrane Filtration D4807.
- Viscosity, Water Content, Wax Content.

## **8. Who holds title on oil and gas reservoirs?**

The Basic Law of Saudi Arabia (Saudi Arabia Royal Decree No. A90/1412, 1 March 1992) vests all the Kingdom of Saudi Arabia's oil and gas wealth in the Government.

Concession agreements are awarded by Royal Decree issued by the King after approval from the Consultative Assembly and the Council of Ministers.

## **9. Is the position different for offshore, surface or subsurface extraction?**

No, the law proclaims all-natural wealth, be it underground, on the surface, or in national territorial waters, the property of and under the control of the state.

## **10. Are there any specific rules governing the ownership of pipelines?**

In line with national laws all pipelines are owned by Aramco. Third parties are not granted access to these pipelines.

## **11. Are there any restricted areas where extraction is not allowed?**

The Saudi Wildlife Authority selects sites for protection and conservation based on different ecological and socio-economic criteria. These include:

- Representative coverage of all the Kingdom's biotopes.
- Protection of existing populations of key wildlife species.
- Protection of habitats of key biological importance
- The potential of the site to provide tangible economic benefits to local people.
- Sites which are of greatest value for environmental education and awareness.
- Recognition of traditional protection by local people.

- An equitable geopolitical spread of protected areas.

At present the Authority manages 15 protected areas, which have been ratified by its Board of Directors. The Authority's protected areas system plan has recommended over a hundred sites for protection which accounts for more than 8% of the Kingdom. This figure will increase to over 10% as new areas are identified and incorporated into the protected areas system.

## **12. Are there any restricted extraction practices, e.g. fracking?**

Extraction in Saudi Arabia is relatively easy and cheap. As a result, extraction practices like fracking are not considered economically sensible.

## **13. Are there any specific environmental laws which need to be considered by those operating in the oil and gas sectors?**

There are a variety of legislative restrictions in place which relate to:

- discharge to marine environment from drilling operation,
- waste water treatment re-use and disposal,
- protection of marine life
- pollution control and environment protection
- waste management for mud, cuttings and rubbish.

Most environmental laws were introduced and are outlined in the 2001 General Environmental Regulations and Rules for Implementation Resolution (Council of Ministers Resolution No. 193.)

The detail of the legislation is contained in the appendices of the Implementing Rules, as follows:

- Appendix 1: Environmental Protection Standards.
- Appendix 2: Procedures for the Assessment of Environmental Effects of Industrial and Development Projects.
- Appendix 3: Manual of Environmental Qualification Procedures.
- Appendix 4: Rules and Procedures for the Control of Hazardous Waste.
- Appendix 5: National Contingency Plan for Combatting Pollution by Oil and other Harmful Substances of the Marine Environment in Emergency Cases.
- Appendix 6: Violations and Fines.

Some of the more important regulations are for offshore operations and apply to all vessels such as drilling rigs, supply boats, barges, etc working in Saudi territorial waters or working under Saudi Aramco contractors in an offshore area.

These include regulations relating to:

- Sewage Disposal. A sewage treatment plant is required for any facility located less than four nautical miles from land and manned by 10 or more people.
- Industrial Drainage. All types of water flows, such as surface run-off/effluent and oil drainage, must be collected through sealed systems to either slop tanks or caissons.
- Trash/Rubbish. No discharge is allowed to the sea. All trash will be hauled back to an approved onshore disposal site.
- Oil-Based Mud/Toxic Fluids/Cuttings from Toxic Fluids. All oil-based drilling fluids, toxic fluids, and cuttings from toxic drilling fluids must be hauled back to an approved onshore disposal site. For alternative oil-based fluids, LC-50 toxicity tests will be run to determine toxicity of the cuttings. If fluids are toxic, then fluids and cuttings should be disposed in an approved disposal site.

## **14. How are oil/gas firms regulated - do they need to have specific capital, professional status, ownership credentials?**

Oil and gas firms are regulated by the Ministry of Energy, Industry and Mineral Resources (MEIM), who develop and implement policies relating to oil and gas.

All firms seeking to acquire licensing to conduct industrial or commercial activities in Saudi Arabia must meet SAGIA's requirements for minimum acceptable capital and a percentage of Saudi partnership.

These requirements differ based on the type of license and sector

These requirements are significantly greater for oil and gas firms since investment in them is only allowed through joint-ventures with Saudi Aramco.

### **15. Is there any specific regulation over accreditation firms involved as sub-contractors in oil /gas business?**

The Saudi Arabian Standards Organisation (SASO) is the only Saudi entity empowered to grant standards accreditation. SASO maintains significant authority in developing, elaborating on and enforcing standards for Saudi Arabia. Royalties are paid to the Government.

### **16. Are royalties paid to the Government?**

Royalty rates are stipulated in each particular petroleum concession agreement (PCA). Royalty payments in respect of production are deductible for tax purposes in calculating the tax base of a company engaged in oil or other hydrocarbon production activities.

### **17. How does the royalty process work for oil and gas?**

Royalty rates are stipulated in each particular petroleum concession agreement (PCA). Royalty payments in respect of production are deductible for tax purposes in calculating the tax base of a company engaged in oil or other hydrocarbon production activities.

### **18. What other taxes are levied on the production and sale of oil and gas products?**

Companies engaged in oil and gas production are subject to Corporate Income Tax (CIT) at the rate of 50% to 85% on their tax base, determined on the basis of their total capital investment (effective retroactively as of 1 January 2017). Tax base is calculated as total revenue subject to tax less allowable deductions and is determined in line with the Saudi Arabian Income Tax Law (effective from 30 July 2004).

The Natural Gas Investment Tax (NGIT) applies to companies (irrespective of their Saudi or non-Saudi ownership) engaged in natural gas, natural gas liquids and gas condensates investment activities in Saudi Arabia. NGIT does not apply to a company engaged in the production of oil and other hydrocarbons. The NGIT rate ranges from 30% to 85% and is determined on the basis of the internal rate of return on cumulative annual cash flows. The NGIT rate includes income tax of 30%.

The NGIT was cancelled in 2018 via Saudi Arabia Royal Decree No. M70/1439.

### **19. Are any environmental taxes levied on the production of oil and gas products?**

There are no environmental taxes levied on oil and gas products in Saudi Arabia.

### **20. How long are licenses/concessions? Can they be renewed if so how?**

The length of petroleum concession agreement's (PCA) differ as approval for PCA's are reviewed independently before being awarded.

### **21. If offshore production - how far does the seaward regime operate?**

Saudi Arabia's seaward regime extends for a distance of six nautical miles from the coastline. These base lines were established by Saudi Arabia Decree No. 6/4/5/3711/1949 on the territorial waters of Saudi Arabia.

### **22. How is transportation regulated - onshore and offshore - are permits required?**

Construction and operation of pipelines for transportation for both onshore and offshore activities are subject to strict regulations which include:

- The design factor of the pipelines must be based on population concentration and area classification.
- Horizontal spacing between any pipeline and overhead power line is based on the power line voltage and minimum vertical spacing of not less than 15 metres.
- The minimum crossing angle between pipelines is 45 and 135 degrees.
- Emergency isolation valves (EIVs) are located at both ends of any pipeline.

Foreign firms are not awarded permits to construct new pipelines or access existing pipelines.

### **23. How do you obtain rights to construct pipeline or storage facilities for oil and gas?**

Saudi Aramco has exclusive ownership over pipelines in Saudi Arabia and foreign firms are not allowed to construct pipelines or storage facilities for oil and gas.

## **24. Can pipeline or storage facility owners be required to allow other producers to use their facilities?**

Saudi Aramco has exclusive ownership over pipelines in Saudi Arabia and are allowed to access privately owned pipelines or storage facilities if needed.

## **25. What specific health and safety rules apply to the industries - and how actively are they monitored/violations prosecuted?**

Employers and employees in the oil and gas industry must adhere to health and safety procedures set by the Saudi Labour Law (Saudi Arabia Royal Decree No. M51/1426), which was enacted in 2005.

Under the law employers have to:

- Maintain the worksite in a clean and hygienic condition, provide adequate lighting, supply drinking and washing water and provide antiseptics.
- Take the necessary precautions to protect the workers against hazards, occupational diseases.
- Provide access to instructions related to work and workers safety in Arabic in addition to any other language understood by the workers.
- Train the workers on using safety tools.
- Appoint a supervisor to educate the workers on H&S procedures, make regular inspections to ensure the safety of equipment and supervise the performance of H&S rules.
- Inform the worker, prior to engaging in the work, of the hazards of his job and require him to use the prescribed protective equipment.
- Supply the workers with the appropriate personal gear and train them on their use.
- Provide the technical means to combat fire including fire extinguishers and safety exits which will be maintained in working condition at all times, post in a prominent location in the workplace detailed instructions for fire prevention devices.
- Prohibit smoking at the workplace.
- Make available one or more medical aid cabinets, supplied with medicine and other necessities required for first aid.
- Assign one or more physician to provide, at least once a year, a full check-up to its employees which are prone to occupational disease and record the results in specified records and in the worker's files.
- Provide appropriate healthcare.
- For more than 50 workers, provide a full-time paramedic and provide a first aid room.
- For more than 500 workers where the worksite is located at least 10 milometres away from the nearest medical unit, provide an ambulance for transporting injured workers.

Health and safety violations in oil and gas are frequently monitored by safety supervisors who are subject to extensive incident reporting rules and standards.

## **26. Is certification required for specific areas of production?**

As investment in oil and gas production is restricted, no certifications are required for specific areas of production aside from approval from the Saudi Centre for Energy Efficiency and the Ministry of Energy, Industry and Mineral Resources.

## **27. How does Emiratisation and preference for local workers work in the oil/gas industry?**

Under the Nitaqat programme implemented by the Ministry of Labour, employers are classified based on the percentage of Saudi nationals which they employ.

- Establishments will be categorised as premium, green, yellow or red.
- In general, an employer benefits from being in a higher category through greater flexibility in recruiting and managing expatriate employees and will face increased penalties when placed in a lower category.

### **Key restrictions on hiring foreign workers**

Every employer must have at least one Saudi national employee, regardless of size.



Certain functions may be undertaken only by Saudi nationals.

An employer must employ a Saudi national in a job before employing a non-Saudi national in that job.

## **28. Do foreign workers need specific qualifications/accreditation?**

Foreign workers must have approval from the Ministry of Labour and the Ministry of Interior first.

Saudi Arabia has a sponsorship system, where expatriate workers can enter, work and leave the host country only with the permission or assistance of their sponsor.

All individuals who come to Saudi Arabia to work must have a sponsor, which can be either a Saudi Arabian national or international company.

A non-Saudi national may be employed for only a fixed term corresponding to the duration of their work permit and residency visa.

## **29. Are there specific rules governing the sale and marketing of oil and gas products produced in this jurisdiction?**

The Petroleum Products Trading Law was enacted to regulate crude oil and its derivatives, including aviation fuel, kerosene, gasoline, diesel, fuel oil and other variants (but not gas).

- It aims to regulate all commercial activity like sale, transport, storage, distribution, import and export of crude oil and its variants.
- Under the Law, it is not permitted to use government priced fuel in transport or industry except as fuel for end-user consumption. Petroleum products used as feedstock must be used at global prices (Article 4, Petroleum Products Trading Law).
- Entities involved in the export and import of priced and non-priced petroleum products must be regulated by the MEIM through relevant licenses (Article 5, Petroleum Products Trading Law).
- The customs department will collect the difference in price between the government price and the international market price as custom duties for any exported petroleum products (Article 6, Petroleum Products Trading Law).

## **30. How does price setting operate for oil/gas sales and oil/gas distribution - are there mandatory requirements?**

The Ministry of Energy, Industry and Mineral Resources (MEIM) regulates the local prices for oil and gas products. An agreement for sale of petroleum products must explicitly state the purpose of sale and the price applicable to it (Article 5(3), Executive Regulations of the Petroleum Trading Law).

The Gas Supply and Pricing System Regulations deal with gas pricing and supply. The Supply and Pricing Committee established under the Regulations:

- Determines the required supply of gas in the medium and long term.
- Proposes criteria for quotas and the most efficient use of gas as an energy source.
- Proposes gas pricing plans on recommendation from the MEIM.
- Submits its recommendations and proposals to the Minister of Energy, Industry and Mineral Resources, who submits them to the Supreme Council of Petroleum and Minerals.

## **31. Are there any specific competition rules which apply in the oil and gas sectors?**

Saudi Arabia adopted a Competition Law in 2004 and it came into effect in January 2005. The Law and the associated Regulations and Competition Rules make up Saudi Arabia's competition law regime and they are enforced by a Competition Council.

The law applies to all firms, i.e. any corporation or company and business doing business in Saudi Arabia.

However, this does not include public (i.e. government) corporations and fully-owned state enterprises like Saudi Aramco.

## **32. Are there any specific rules on the ownership structure of oil and gas companies?**

Oil and gas companies in Saudi Arabia must meet SAGIA's requirements for minimum acceptable capital and a percentage of Saudi Ownership.

## **33. Does oil and gas regulation differ inside freezones?**

Saudi Arabia does not currently have any completed Free Zones, as recognised by the World Trade Organisation (WTO).

To diversify their economy in line with the ambitious Saudi Vision 2030 the government has started the development of four 'Economic Cities' (EC's) where regulations regarding foreign ownership, capital requirements, and taxation will be loosened to boost foreign investment.



- King Abdullah Economic City (KAEC)
- Prince AbdulAziz Bin Mousaed Economic City (PABMEC)
- Knowledge Economic City (KEC)
- Jazan Economic City (JEC)
- PABMEC construction has been put on hold and the other three EC's are still in the construction/execution phase.

However as of 2019, foreign investment in activities relating to oil and gas production or exploration are still prohibited.

## **Firm**

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### ***Areas of expertise***

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- J.D, Suffolk University School of Law, Boston, USA
- B.Sc (Economics), Boston University, Boston, USA

While in law school, John received the American Jurisprudence Award for Academic Excellence and was on the Dean's List.

### ***Memberships***

- New York State Bar
- Massachusetts State Bar
- U.S. Court of International Trade
- U.S. District Court for the Southern District of New York

### ***Biography***

- John J. Maalouf is one of America's top lawyers and is a globally recognised expert in the areas of International Trade & Finance Law, International Arbitration, Corporate & Business Law, Banking Law, Mergers & Acquisitions, Oil & Gas Law, Pharmaceuticals Law, Telecommunications Law, and Intellectual Property Law.
- Under John's leadership, Maalouf Ashford & Talbot has been honoured as "Law Firm of the Year" in the United States, Dubai, Kingdom of Saudi Arabia, China, Lebanon, Egypt, Qatar, Bahrain, the United Kingdom, and Brazil for 2018 in 54 different categories. In addition, John has been ranked as one of the Top 10 International Trade & Finance Lawyers in the United States for the past 12 consecutive years by the United States Lawyer Rankings - 2017 Edition, 2016 Edition, 2015 Edition, 2014 Edition, 2013 Edition, 2012 Edition, 2011 Edition, 2010 Edition, 2009 Edition, 2008 Edition, 2007 Edition and 2006 Edition.
- John regularly counsels clients on matters involving international business transactions, international arbitrations & mediations, mergers & acquisitions, oil & gas transactions, compliance issues, international banking, and foreign investment in the Middle-East. In addition, John specializes in representing multinational companies in connection with intellectual property law matters, pharmaceutical law matters, and technology, media and telecommunications law matters
- John is an International Arbitrator with the London Court of International Arbitration, the Dubai International Arbitration Centre, the Emirates Maritime Arbitration Centre, the International Council for Commercial Arbitration, FINRA (Financial Industry Regulatory Authority - United States) and the GCC Arbitration Centre. As an International Arbitrator, John decides large international commercial disputes between multinational companies around the world.
- John is also an Executive Member of the Oil Council, an international organization dedicated to advancing the interests of the oil & gas industry worldwide.
- In addition, John is a member of MENSA, the International High IQ Society.
- Among his other accomplishments, John is highly regarded as one of the world's leading experts in cross border transactions involving China, and is co-author of the book "Inside the Minds: Best Practices for Mergers and Acquisitions in China" (2011) published by Thomson West, the world's most respected name in legal publishing.