



# The Petroleum Law 2022 – oiling the wheels of progress?

As Vietnam's development continues, its energy requirements will increase. All countries are aware of the need to plan for the future when it comes to energy security and Vietnam is no exception. Pursuant to resolution No. 55-NQ/TW dated 11 February 2020, the Politburo has confirmed the plan for Vietnam's national energy development up to 2030 with a vision to 2045 which mainly focuses on renewable sources and gas-to-power projects. The recently issued national Power Development Plan VIII (PDP8) is a further development in explaining Vietnam's energy strategy.

The Petroleum Law No. 18-L/CTN dated 6 July 1993 (as amended from time to time) (together with its implementing regulations) (the *Old Petroleum Law*), being the current and existing key legislative regulation governing the petroleum sector in Vietnam, is widely considered to be out-of-date and inconsistent with other Vietnamese laws and international commitments and practices in the energy industry.

International investors in the oil and gas sector are now in a fortunate position because, from 1 July 2023, the new Petroleum Law (the *Petroleum Law 2022*), which was passed by the National Assembly on 14 November 2022, will take effect.

The Petroleum Law 2022 will supersede the Old Petroleum Law and aims to rectify certain issues in the Old Petroleum Law, with the government hoping that the proposed revisions will attract more foreign and private investors to the oil and gas sector in Vietnam.

## Key changes of the Petroleum Law 2022

### New legal framework for basic petroleum survey

Similar to the Law on Minerals No. 60/2010/QH12 which governs rights to mine / exploit natural resources / minerals other than hydrocarbons, under the Petroleum Law 2022 private investors as well as the Vietnam Oil and Gas Group (PVN), other State agencies

and State-owned companies may undertake a "basic petroleum survey", which is defined under the Petroleum Law 2022 to cover "research, surveys and investigations of geological formations and material composition, conditions and rules of petroleum generation in order to assess the potential and prospect of petroleum as a basis for orienting petroleum prospection and exploration activities". Under the Old Petroleum Law, such "basic petroleum surveys" could only be undertaken by PVN.

Private investors who satisfy certain conditions set out under the Petroleum Law 2022 and as follows, may carry out such basic petroleum surveys, on terms and conditions agreed in writing with PVN, and utilise any information obtained from such surveys for the purpose of assessing the potential of oil and gas prospection and exploration:

- each relevant private investor having sufficient financial and technical capacity and the relevant experience. What this means in practice is not specified in the Petroleum Law 2022 but the Government intend to provide guidance on this point. If an investor is not qualified, such investor must enter into a joint venture with investor(s) who have such sufficient financial and technical capacity and relevant experience in order to undertake such "basic petroleum survey"; and
- using "modern techniques and technologies" (though the Petroleum Law 2022 provides no guidance as to how this should be interpreted).

As is usually the case in Vietnam with respect to legislation, the Petroleum Law 2022 merely stipulates the high-level requirements applicable to the undertaking of "basic petroleum surveys" without any detailed guidance on what needs to be submitted to the Government to satisfy such requirements and procedures relating to the appraisal, approval, management and implementation of such

“basic petroleum surveys”. It is anticipated that the Government will issue such details in due course. The Petroleum Law 2022 does set out certain principles on the requirements relating to the undertaking of “basic petroleum surveys” and the use and management of the Data (defined below) by other private investors which are not the party that actually carries out the survey, as follows:

- the State will not collect fees for the use of marine areas for basic petroleum surveys;
- the survey will need to be on a list of basic survey schemes approved by the Prime Minister before it can be undertaken (this means that Prime Minister approval will be required before such surveys can be undertaken);
- in principle, all specimens, documents, information and data obtained in the course of conducting petroleum basic surveys and petroleum activities (*Data*) belong to the State and the organisation or individual conducting the basic survey must submit the Data and results of the approved petroleum basic surveys to PVN. However, such organisation or individual has the right to transfer out of Vietnam: (i) documents obtained during the course of the undertaking of the relevant basic surveys; and (ii) specimens with appropriate volume and types for analysis and testing, subject always to compliance with the basic survey scheme approved by the Prime Minister and Vietnamese laws. The exploitation and use of information, data and results of the basic surveys must also comply with the approved agreement and the relevant non-disclosure agreement executed by the relevant organisation or individual in favour of PVN (if applicable); and
- subject to confidentiality obligations, the Data can also be accessed and used by other organisations and individuals for the purpose of studying, evaluating, and proposing a potential Vietnam petroleum investment, subject to the payment of certain fees to PVN and in accordance with an approved agreement between the relevant organisations or individuals and PVN.

### **Contractor selection for new petroleum contracts**

The Petroleum Law 2022 develops further and provides additional guidance on the approach taken on the selection of contractors for new petroleum contracts, as currently provided for in Decree 95/2015/ND-CP (*Decree 95*).

Decree 95 sets out three options for a contractor to be selected for newly granted petroleum contracts: (i) open tender; (ii) competitive bidding; and (iii) direct appointment. The Petroleum Law 2022 provides for an additional option of contractors being selected through a limited tender process. Briefly, such a process will operate like an open tender application process with certain conditions that only a limited number of contractors will be able to satisfy.

Under Decree 95, applicants wishing to apply for a new petroleum contract through a tender process are required to have participated in (or are currently participating in), at least two petroleum contracts in Vietnam. Under the Petroleum Law 2022, there is no such requirement.

In addition, under the Petroleum Law 2022, the contractor(s) of an existing petroleum contract may apply to PVN for an execution of a new petroleum contract in respect of the same contract area of the existing petroleum contract which will take effect after the term of the existing petroleum contract expires (see item 2.5 below), without having to participate in a contractor selection process prescribed under the Petroleum Law 2022.

### **Petroleum contract – duration**

As a result of protracted and delayed exploration periods, several petroleum field development projects (e.g. White Lion field, Block 15-1, and Block B) now have a shorter remaining duration for production of hydrocarbons under their respective petroleum contracts than was initially anticipated. The Petroleum Law 2022 increases the contract term of any new petroleum contract that is entered into from 25 years (or, in case of encouraged investment projects, i.e., projects which are subject to investment incentives, 30 years) under the Old Petroleum Law to 30 years (or, in case of encouraged investment projects, 35 years). It is expected that the longer term will provide flexibility and increase the attractiveness for contractors to invest in Vietnam’s oil and gas sector.

There is no indication under the Petroleum Law 2022 that the new 30-year term will automatically apply to existing petroleum contracts executed prior to the implementation of the Petroleum Law 2022. However, it is expected that there will be more flexibility under the Petroleum Law 2022 for contractors to apply for the extension of the term of existing petroleum contracts by up to five years, instead of two years under the Old Petroleum Law.

## **Petroleum contract – prospecting and exploration areas**

Under the Old Petroleum Law, a prospecting and exploration area under a petroleum contract (i.e., the contract area) must not exceed the area of two different blocks / fields, except for exceptional cases as approved by the Government.

The Petroleum Law 2022 permits the contract area under a petroleum contract to include areas of multiple blocks in certain circumstances (for example, in the case of commercial discovery at two adjacent existing petroleum blocks at the same time and to combine the areas of those two adjacent existing petroleum blocks into a petroleum contract) but subject to the approval of the Prime Minister. While this increased flexibility is welcomed, in practice the benefit of this change in law may be limited. For example, if the law allows contractors to acquire new blocks but they remain under the same petroleum contract, there could be complexities that arise from the difference development stages of those blocks.

## **New petroleum contract after expiration of current petroleum contract**

Assuming the term has not been extended, a petroleum contract will either expire at the end of the contract term or may be terminated early by a mutual agreement between PVN and the contractor parties.

Under the current petroleum regulations, there are no express provisions covering the decommissioning of infrastructure and facilities used in the working area of a petroleum contract following the expiry or termination of such petroleum contract, in circumstances where further production from the underlying fields and working area is possible. The Petroleum Law 2022 introduces a new mechanism that addresses this, a summary of which is set out below:

- While there is no guarantee that the existing contractor will be granted a new petroleum contract (in respect of the same contract area under the expiring petroleum contract) the existing contractor is given priority over any other potential contractors to sign a new petroleum contract after the end of the previous contract. Specifically, the existing contractor can submit to PVN, for approval and consideration, an investment plan with suitable economic and technical conditions in connection with the development of the contract area under a new petroleum contract, at any time two years before the expiry of the contract term of the current

petroleum contract. We would expect that process to be wrapped up at least six months before the expiry of the contract term (see below).

- This proposal will be appraised by the MOIT and approved by the Prime Minister. If so approved, the existing contractor will then have a right to execute a new petroleum contract with PVN.
- At least six months before the expiry of the contract term, if no new petroleum contract is signed, PVN must prepare and submit the plan for the relevant fields, clusters and blocks to the MOIT for appraisal and approval by the Prime Minister.
- Any contractor that signs a new petroleum contract may access and use the Data and existing infrastructure and other assets that relates to the current petroleum contract which subsequently expires, on a free of charge basis.

## **Implementation of a petroleum development project that spans the entire petroleum value chain**

The concept of a “petroleum value chain” encompasses the sequence of upstream (exploration and production (E&P)), midstream (refining, transportation and storage) and downstream (transportation and marketing of end-user products) activities which results in oil, oil products, and gas being sold in the market.

The Petroleum Law 2022 contemplates certain projects that have a “synchronous chain of work items, with petroleum equipment onshore and offshore”. This therefore reflects projects that may span the petroleum value chain and which therefore may need to have infrastructure both offshore and onshore, for example transmission pipelines to onshore gas processing and treatment facilities. One example of this is the Blue Whale gas project, where ExxonMobil is the contractor party that holds the majority interest. After discovery of gas within the relevant contract area, the project has expanded to include not just E&P operations, but also refining and processing operations together with marketing and distribution activities.

The Government expects that similar projects to the Blue Whale gas project will be developed in Vietnam in the future. Accordingly, the Petroleum Law 2022 provides that petroleum projects can be implemented with the entire petroleum value chain where the contractors are permitted to build works items and petroleum equipment offshore and onshore outside the initial contract area. In particular:

- in the process of preparing and developing a general plan for petroleum field development, if PVN considers that a value chain is necessary for the implementation of the proposed development, PVN may prepare and submit a field development project with a value chain to the MOIT for appraisal and thereafter in-principal approval of the Prime Minister; and
- if such a project requires the change of forest and land use purposes (if any) for onshore infrastructure construction purposes, depending on the total area and the type of the relevant land / forest, in-principal approval of the National Assembly or the Prime Minister would be required before the general plan for the implementation of the project is approved.

### Access to existing infrastructure

The Petroleum Law 2022 provides a legal basis for a contractor to access and use existing infrastructure in connection with petroleum operations if appropriate contracts or agreements are put in place with the owner of, or the entity managing, the relevant infrastructure. The Old Petroleum Law is silent on this.

### Unconventional petroleum resources

The Petroleum Law 2022 for the first time recognises unconventional petroleum resources within its definition of “petroleum”, which now extends to: coal gas, oil shale or shale gas, natural gas hydrates, bitumen, and other possible hydrocarbon forms.

While the development and exploitation of unconvensionals is at a nascent stage in Vietnam, the recognition of “unconventional” hydrocarbons in the definition of petroleum demonstrates that Vietnam is looking to the future. Indeed, the Government has also offered the same investment incentives (that apply to eligible traditional petroleum development projects as mentioned in section 2.9) to promote the development and exploitation of unconventional petroleum resources in Vietnam.

This “future” may not even be that far away – according to public sources, a basic survey project on potential natural gas hydrates resources in the continental shelf of Vietnam has already commenced.

### Investment incentives

One of the most valuable assets to any investment in Vietnam are governmental investment incentives.

In Vietnam, certain investment incentives are offered

by the Government to foreign contractors and investors to promote investment and activity in the petroleum sector.

Under the Petroleum Law 2022, such a regime has been changed and includes two types of incentives, namely “investment incentives” and “special investment incentives” that a foreign contractor could qualify for, depending on certain features of the relevant petroleum blocks or fields.

Briefly:

- Investment incentives: foreign contractors that qualify for such incentives will enjoy a corporate income tax rate of 32%, a crude oil export tax rate of 10%, and a cost recovery rate of up to 70% of the annual petroleum output.
- Special investment incentives: foreign contractors that qualify for such incentives will enjoy a corporate income tax rate of 25%, a crude oil export tax rate of 5%, and a cost recovery rate of up to 80% of the annual petroleum output.

In order for contractors of a petroleum block or field to enjoy the relevant incentives, the relevant blocks or fields must be approved and included in the list of petroleum blocks and fields entitled to the incentives issued by the Prime Minister. There is no indication under the Petroleum Law 2022 about whether an existing contractor that is qualified can be entitled to the new investment incentives under the new law. However, the Petroleum Law 2022 does not expressly restrict a qualified existing contractor from applying for these new incentives based on the existing petroleum contract under the Old Petroleum Law. Our expectation is that new detailed regulations in connection with the incentive regime will be issued by the Government in due course.

### Compatibility with other laws

Certain regulations are included in the Petroleum Law 2022 that amends the current position in relation to petroleum development projects that are currently regulated under other existing laws (e.g. laws on investment, construction, land, environmental protection). Below is a summary of key matters that will be subject to changes under the new law:

- the Prime Minister's approval of the content of a petroleum contract will provide the basis for contractors to sign a petroleum contract and will replace the in-principle approval in respect of petroleum development projects as prescribed under

the Investment Law and the Law on Public Investment;

- the process and requirements for the preparation, appraisal and approval of an outline plan for any petroleum field development as set out under the Petroleum Law 2022 will replace the process and requirements for the preparation, appraisal and approval of a construction investment pre-feasibility study report for a petroleum project as currently prescribed under the Law on Construction; and
- the process and requirements for the preparation, appraisal and approval of a plan for production under a petroleum field as set out under the Petroleum Law 2022 will replace the process and requirements for the process and requirements for the preparation, appraisal and approval of any construction investment feasibility study reports of a petroleum project as currently prescribed under the Law on Construction.

## Grandfathering

The Petroleum Law 2022 contains certain grandfathering provisions. In summary, these grandfathering provisions are as follows:

- For petroleum contracts that have been signed and issued with investment registration certificates before 1 July 2023 (being the effective date of the Petroleum Law 2022), contractors must continue complying with the terms of, and will still enjoy the incentives under, the signed petroleum contracts and issued investment registration certificate until the end of the term, assuming those terms are more favourable than those provided under the Petroleum Law 2022.
- For petroleum plans and programmes (which in our view, should include field development plans) which have been approved by the authorities before 1 July 2023, the relevant parties must continue complying with the approved plans and need not be supplemented with any new contents as specified in the Petroleum Law 2022.
- For plans which have been submitted to the authorities before 1 July 2023, the relevant parties do not need to amend the plans and the plans will be appraised according to the Old Petroleum Law.

## Implications for contractors / investors and general comments

Our expectation is that the Petroleum Law 2022, once it comes into force, will be generally welcomed by investors in the oil and gas industry.

The industry is not small when compared against the global sector (in 2021, Vietnam was ranked as 32nd among oil producing countries, in terms of total oil production)<sup>1</sup> and has the potential to remain one of the top oil producing countries in the world. However, there has been a significant decrease in the number of newly signed petroleum contracts in Vietnam during the period from 2015 to 2019 (with only one petroleum contract being signed in each year) and there have been very few, if any, since.

While the Petroleum Law 2022 will not provide an immediate fix to the issue of declining investment in the sector, it does provide more certainty in relation to the terms of the new petroleum contracts and petroleum operations in Vietnam, and the Government has provided clarity on certain industry wide issues that relate to existing petroleum contracts through the issuance of the Petroleum Law 2022.

However, investors and industry participants do not have the full picture on how the new law is intended to operate, given detailed guidance from the Government as to the manner on how the Petroleum Law 2022 will be implemented in practice has not yet been issued.

Although a draft decree of these implementing regulations is in circulation for industry consultation, there are certain provisions in the draft decree relating to implementation of certain provisions in the Petroleum Law 2022 (such as those relating to the timeline and procedures for extending the term of existing petroleum contracts and legal implications when old oil and gas contracts are converted to new oil and gas contracts) that require clarification. Given that, in our experience, these are some of the most common existing concerns of major contractors in Vietnam, we hope that the final Government decree is clear on these points.

The Government is committed to administrative reform in the oil and gas sector and it will be interesting to see what effect the Petroleum Law 2022 has on the sector.

<sup>1</sup> Source: Rankings by U.S Energy Information Administration (EIA) at <https://www.eia.gov/international/rankings/country/VNM?pa=12&u=0&f=A&v=none&y=01%2F01%2F2021>, accessed on 5 June 2023

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