

Regulation of Upstream Oil & Gas

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Overview

- The UAE is among the world's ten largest oil producers and is a member of the Organisation of the Petroleum Exporting Countries, the Organisation of Arab Petroleum Exporting Countries and the Gas Exporting Countries Forum.
- Around 94% of the UAE's oil reserves are located in Abu Dhabi and each of the seven individual Emirates that constitute the UAE are responsible for the regulation of the sector within their own territory. In addition to oil, individual Emirates within the UAE have provided concessions for the extraction of natural gas, and the UAE plans to boost this domestic natural gas production to help meet growing internal demand.
- This practice note provides an overview of the legal framework for the UAE's upstream, i.e., the exploration and production of oil and gas, sector (both onshore and offshore).

Definitions

- *ADCO*: Abu Dhabi Company for Onshore Petroleum Operations.
- *ADDE*: The Abu Dhabi Department of Energy
- *ADMA-OPCO*: Abu Dhabi Marine Operating Company.
- *ADNOC*: Abu Dhabi National Oil Company.
- *IOC*: International Oil Company.
- *SCFEA*: Abu Dhabi's Supreme Council for Financial and Economic Affairs
- *SPC*: Supreme Petroleum Council
- *SNOC*: Sharjah National Oil Company
- *UAE*: The United Arab Emirates

Practical Guidance

Legal and regulatory framework

Constitution

Pursuant to article 23 of the UAE Constitution, the natural resources in each Emirate are the public property of that Emirate. The federal Ministry of Energy develops general policy but there are no unified federal oil and gas laws and each Emirate has autonomy to determine its own regulatory framework.

Supreme Council

Abu Dhabi, Dubai and Sharjah each have a Supreme Council with authority over the petroleum sector in their respective Emirates.

The SCFEA creates and administers policy and regulations and sets the fiscal framework for the industry, the SCFEA replaced the SPC. The SCFEA is chaired by the ruler of Abu Dhabi and comprises nine other members. The ADNOC Board is chaired by the ruler of Abu Dhabi and comprises nine other members including the UAE's Minister of Energy and the ADNOC CEO. ADNOC participates in concessions on behalf of the Government of Abu Dhabi.

Sharjah's Supreme Petroleum Council creates and administers petroleum policy in the Emirate of Sharjah. The SNOC participates in concessions on behalf of the Sharjah Government and is the owner and operator of the Sajaa assets, which were first granted by concession to Amoco Oil Company in 1978.

Dubai's Supreme Council of Energy is tasked with delivering primary energy resources, setting tariffs and managing environmental impact in the Emirate of Dubai. The Department of Oil Affairs issues licenses to conduct oil-related activities. Wholly government-owned Dubai Petroleum Establishment is the entity responsible for managing Dubai's offshore petroleum assets and in 2007 took over ConocoPhillips' concession, which included the giant Fateh field.

Local laws

The respective Emirates do not have comprehensive oil and gas legislation in place and the relevant law is instead established through various applicable laws and decrees. In the case of Abu Dhabi, these include:

Law	Function
Abu Dhabi Law No. 7/1971 on the Incorporation of the Abu Dhabi National Oil Company (ADNOC)	Established ADNOC.
Abu Dhabi Law No. 12/1973 on Petroleum Ports in Abu Dhabi*	Concerns the protection of the marine environment and navigation of vessels in petroleum ports.

Abu Dhabi Law No. 4/1976 on Abu Dhabi Emirate Ownership for the Gas	Vests ownership of gas in the Emirate and grants ADNOC the right to exploit and use all such gas either solely or through joint agreements or projects concluded with third parties, provided ADNOC's participation is at least 51%.
Abu Dhabi Law No. 8/1978 on the Preservation of Oil Resources in Abu Dhabi	The principal legislation governing upstream operations including consent procedures for exploration activity and facility construction and provisions setting standards and reporting obligations relating to drilling and abandonment.
Abu Dhabi Law No. 1/1988 on the Establishment of the High Council for Petroleum in Abu Dhabi	Established the Supreme Petroleum Council.
Federal Law No. 24/1999 On the Protection and Development of the Environment	Sets various environmental standards, permitting procedures and penalties that apply across the UAE.
Federal Law No. 14/2017 On Trading in Petroleum Products	Sets the rules on trading and transporting petroleum products.
Abu Dhabi Law No. 11/2018 On Establishing a Department of Energy	The ADDE was established under this law to regulate the energy sector including Oil & Gas in Abu Dhabi and serves as the authority to apply SCFCE policies and regulations.
Abu Dhabi Law No. 5/2023 On the Regulation of the Trade of Petroleum Products in the Emirate of Abu Dhabi	Gives the ADDE the authority to implement the provisions of Federal Law No. 14/2017 regarding trading of the Oil and Gas.

Treaties

In terms of investment protection for foreign investors in the upstream sector:

- The UAE is a signatory to the New York Convention on the recognition of foreign arbitral awards, although there have only been limited instances where the convention has successfully been relied upon to enforce awards in the UAE. In practice, government-owned entities require agreements to which they are party where performance is within an Emirate to be governed by the law of that Emirate with disputes subject to local arbitration; and
- The UAE has numerous bilateral investment treaties in place, including with the home nations of most of its major industry investors.

From an environmental management perspective, the UAE has also ratified a number of environmental treaties, including the Basel Convention on Hazardous Waste.

Licensing procedure and concession structures

Oil

Crude oil concessions are granted by the relevant Supreme Council on behalf of the Emirate.

There are no “model form” concession agreements used in the UAE. In Abu Dhabi, rights to explore for and produce oil and gas are typically granted through concessions to ADNOC and selected international partners (either directly to the concession holders who will be bound by a joint venture agreement or to jointly owned project companies). ADNOC retains at least a 60% interest in each concession. ADNOC and its partners typically appoint an operating company to operate the concession on their behalf on a non-profit basis.

Abu Dhabi's major concessions are the ADNOC Onshore (formerly ADCO) and ADNOC Offshore (formerly ADMA-OPCO) concessions:

- The original ADNOC Onshore concession agreement was granted in 1939 and eventually expired in 2014 after 75 years. ADCO was incorporated in 1978 as the company responsible for operations in the concession area. In 2015, a new 40-year concession agreement for the area, which will continue to be operated by ADCO, was signed. ADCO's ownership is now split between ADNOC (60%), Total (10%), JODCO (5%), Korea GS E&P (3%), BP (10%), CNPC (8%) and CEFC (4%).
- The original ADNOC Offshore concession was due to expire in March 2018. ADNOC has since split the concession into multiple areas with new terms to unlock greater value and increase opportunities for partnerships. For example, in January of 2019, ADNOC granted Italy's multinational energy company, ENI, and Thailand's PTT Exploration and Production Public Company Limited (PTTEP) a 100% stake in the explorative phase of two offshore blocks. Upon successful exploration, ENI and PTTEP will have the opportunity to develop and produce any discoveries, with ADNOC retaining a 60% stake in the production phase.

Gas

Abu Dhabi Law No. 4/1976 vests ownership of gas located within Abu Dhabi to the Emirate of Abu Dhabi and grants ADNOC the right to “exploit and use” such gas alone or in partnership with others, provided that it maintains an interest of at least 51%. Foreign investment in producing gas resources occurs via field entry agreements with ADNOC which pays the joint venture a fee for gas produced. Under Abu Dhabi Law No. 4/1976, oil companies may retain and use gas they produce as part of

their own operations on payment of a fee to ADNOC. The remaining gas is then required to be delivered to ADNOC. In practice this gas is delivered to ADNOC Gas Processing (formerly GASCO).

Key issues: company establishment, liabilities, transfer of rights, security and decommissioning

Company establishment

Foreign entities doing business in the UAE are required to either:

- establish a branch or representative office in the UAE; or
- incorporate a subsidiary in the UAE.

Companies are also required to obtain a trade license and the Supreme Petroleum Council and ADNOC require companies to establish an office in Abu Dhabi.

Liabilities

Applicable legislation together with the concession and joint venture agreements establish a liability regime in respect of each concession.

Of particular concern are liabilities for environmental damage and pollution (further considered below) which are addressed, in part, by the following:

Federal Law No. 24/1999	<ul style="list-style-type: none"> • Any person causing damage, whether intentionally or negligently, to the environment is responsible for all costs of treatment and any compensation incurred as a result. • Financial penalties can be imposed in the event of failure to protect the marine environment in accordance with regional and international convention.
Abu Dhabi Law No. 8/1978	<ul style="list-style-type: none"> • The operator must pay compensation (in addition to indemnifying the loss of reservoirs) to the government for waste of hydrocarbons due to failure to adhere to standard petroleum industry practice. • The operator must take all precautions required to prevent pollution. If pollution occurs, the party involved must immediately take steps to remediate the pollution.

Transfer of rights

The relevant Emirate's approval is required prior to the transfer of concession rights.

Security

Foreign companies are usually not obliged to provide any security or guarantees in relation to the granting of concessions.

Decommissioning

General requirements in relation to decommissioning and abandonment are set out in Abu Dhabi Law No. 8/1978. Concession-specific requirements are then addressed in the relevant concession agreements. Operators must comply with general requirements relating to pollution and protection of the environment (as set out in Federal Law No. 24/1999 and Abu Dhabi Law No. 8/1978 described above). Additionally, the UAE is party to the 1989 Kuwait Protocol, which requires that the UAE empower its national authorities with the right to require the operator of an offshore installation to remove the installation, in whole or in part and is also required to abide by any guidelines issued by the organisation established by the contracting states when considering whether to remove any offshore installation.

Tax regime

In 2022, the UAE issued Federal Decree-Law No. 47/2022 On the Taxation of Corporations and Businesses ("Federal Tax Law"). This new law provides that as of 1 June 2023, businesses in the UAE will be subject to corporate tax starting from the commencement of their financial year.

In addition, following the Cabinet Decision No. 116/2023, a standard rate of 9% will apply to taxable income derived by the company exceeding a threshold of AED 375,000, and a rate of 0% will apply to taxable income not exceeding that threshold.

There are several businesses and commercial activities that are exempt from the Corporate Tax Law including oil and gas companies and petrochemical activities. These companies will remain subject to Abu Dhabi Decree No. 1/1965 Abu Dhabi Income Tax Decree 1965 which provides that companies dealing in oil and gas will be taxed at 55% of income minus any tax credits the business receives from the Abu Dhabi government.

Accordingly, Oil and gas companies and businesses carrying out petrochemical activities are subject to income tax at 55%+ rates under their individual UAE concession agreements or Emirate level tax decrees. Tax rates for these companies are agreed on a case by case basis and are subject to the conditions as set out in Articles 7-8 of Federal Decree-Law No. 47/2022.

In practice, fiscal regimes for concession arrangements typically involve a mixture of royalty and income tax. Income tax of between 55% and 85% is payable on oil in Abu Dhabi, depending on the terms of the individual concession agreements, with rates and other fiscal terms negotiated by the Supreme Petroleum Council.

Exploration and production activities in the oil and gas sector will be treated as zero rated under the new value added tax framework implemented across the Gulf Cooperation Council from 1 January 2018.

Health, safety and the environment

The health, safety and environmental regime for the oil and gas sector in the UAE is again derived from a range of sources. Generally, Federal Decree-Law No. 33/2021, and Federal Law No. 24/1999 will apply together with specific regulations, orders, technical guidelines and policies dealing with health and safety requirements.

There is a federal Ministry of Climate Change and Environment, but, in practice, local environmental regulatory bodies monitor the implementation of environmental laws and regulations in each Emirate.

Environmental impact assessment and other permitting requirements are set out in Federal Law No. 24/1999.

Comparison with other regimes

In the early 20th century, the concession regime (e.g., Iraq, UAE) was the most common framework by which IOCs acquired rights to explore and produce hydrocarbons.

Concession structures have developed over time and are now much more favourable to the state which retains permanent sovereignty over the hydrocarbons within its territory (with the IOC only receiving legal title to the hydrocarbons at the wellhead) and takes revenues from its equity participation, royalties and tax. There has been significant legal debate around whether concession agreements are considered contractual or regulatory instruments.

Other contractual regimes adopted by states include:

- production sharing agreements (e.g., Russia) which creates a contractual relationship between an IOC and the state with the former engaged as a contractor which will be entitled to hydrocarbons as payment in-kind; and
- service contracts (e.g., Saudi Arabia, Iran) under which the host state at all points retains full ownership of the hydrocarbons and the IOC is employed as a contractor in return for a fee.

Related Content

Legislation

United Arab Emirates

- The United Arab Emirates Constitution of 1971
- Federal Decree-Law No. 47/2022 On the Taxation of Corporations and Businesses
- Federal Law No. 24/1999 On the Protection and Development of the Environment
- Federal Decree-Law No. 33/2021 On Regulation of Labour Relations
- Federal Law No. 14/2017 On Trading in Petroleum Products
- Cabinet Decision No. 116/2023

Abu Dhabi

- Abu Dhabi Law No. 24/2020 On the Supreme Council for Financial and Economic Affairs
- Abu Dhabi Law No. 1/1988 on the Establishment of the High Council for Petroleum in Abu Dhabi
- Abu Dhabi Law No. 8/1978 on the Preservation of Oil Resources in Abu Dhabi
- Abu Dhabi Law No. 12/1973 on Petroleum Ports in Abu Dhabi
- Abu Dhabi Law No. 7/1971 on the Incorporation of the Abu Dhabi National Oil Company (ADNOC)
- Abu Dhabi Law No. 4/1976 on Abu Dhabi Emirate Ownership for the Gas
- Abu Dhabi Decree No. 1/1965 Abu Dhabi Income Tax Decree 1965
- Abu Dhabi Law No. 11/2018 On Establishing a Department of Energy
- Abu Dhabi Law No. 5/2023 On the Regulation of the Trade of Petroleum Products in the Emirate of Abu Dhabi

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Biography

Mohammad Rwashdeh is special counsel in the dispute resolution team of the firm's Dubai office. Mohammad regularly advises and represents both UAE-based and international clients in a wide range of commercial, intellectual property, civil and criminal disputes.

Mohammad has been instructed as lawyer and counsel in a broad range of contentious and non-contentious matters, including complex commercial contracts, arbitration, corporate, insolvency, anti-corruption, intellectual property, construction, real estate, sharia law, education and training, insurance, data privacy law and employment.



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- Nazanin Aleyaseen is a senior member of the International Arbitration team. She regularly advises and represents international and UAE-based companies in DIAC, DIFC-LCIA, ADCACC and ICC administered arbitration proceedings as well as ad hoc proceedings. She has full advocacy rights, and advises and represents clients, in disputes before the Dubai International Financial Centre Courts.
- Ms. Aleyaseen is also a partner in the Dubai office's Labour, Employment and Workplace Safety practice which is recognized and ranked by Chambers Global in 2014 and 2015. She acts as exclusive employment counsel to multinational corporations with operations in the MENA and GCC region.
- Before settling in Dubai in 2008, she practised in Toronto, Canada and has published several articles relating to litigation and arbitration as well as employment and labour law.



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Kulsum Rehman is a senior paralegal in the dispute resolution team of the firm's Dubai office, based in the Dubai International Financial Centre (DIFC). Having recently joined the firm, Ms. Rehman will be assisting the Dubai team on several of their ongoing matters.

Before joining K&L Gates, Ms. Rehman worked as a paralegal at CMS's Dubai office, working predominately in the disputes team, assisting on contentious and non-contentious matters for the office, including various disputes in the construction and energy sectors.

Prior to that, she has worked as a senior paralegal for Kirkland & Ellis and Herbert Smith Freehills London offices, working alongside their disputes lawyers on a wide range of matters including international arbitrations, commercial litigations and white collar crime investigations. She has also worked for the employment litigation department for the Government Legal Service in the United Kingdom, where she assisted the legal team on various employment law matters.

Ms. Rehman is proficient in English, Punjabi and Urdu (Pakistan).