

THE OIL AND GAS
LAW REVIEW

NINTH EDITION

Editor
Christopher B Strong

THE LAWREVIEWS

THE OIL AND GAS
LAW REVIEW

NINTH EDITION

Reproduced with permission from Law Business Research Ltd
This article was first published in October 2021
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Christopher B Strong

THE LAWREVIEWS

PUBLISHER

Clare Bolton

HEAD OF BUSINESS DEVELOPMENT

Nick Barette

TEAM LEADERS

Joel Woods, Jack Bagnall

BUSINESS DEVELOPMENT MANAGERS

Rebecca Mogridge, Katie Hodgetts, Joey Kwok

RESEARCH LEAD

Kieran Hansen

EDITORIAL COORDINATOR

Leke Williams

PRODUCTION AND OPERATIONS DIRECTOR

Adam Myers

PRODUCTION EDITOR

Louise Robb

SUBEDITOR

Jane Vardy

CHIEF EXECUTIVE OFFICER

Nick Brailey

Published in the United Kingdom

by Law Business Research Ltd, London

Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK

© 2021 Law Business Research Ltd

www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided was accurate as at October 2021, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed
to the Publisher – clare.bolton@lbresearch.com

ISBN 978-1-83862-807-9

Printed in Great Britain by

Encompass Print Solutions, Derbyshire

Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

AB & DAVID AFRICA

ACCORD CHAMBERS

AMERELLER LEGAL CONSULTANTS

ASHURST

BOMCHIL

CUATRECASAS

DLA PIPER WEISS-TESSBACH GMBH

FAVERET LAMPERT AVOGADOS

FITZWILLIAM, STONE, FURNESS-SMITH & MORGAN

GIDE LOYRETTE NOUEL

GORRISSEN FEDERSPIEL

HUNTON ANDREWS KURTH LLP

JIMÉNEZ PEÑA

J SAGAR ASSOCIATES

NOBOA PEÑA & TORRES

NORTON ROSE FULBRIGHT SOUTH AFRICA INC

SHAHID LAW FIRM

SSEK LEGAL CONSULTANTS

VINSON & ELKINS LLP

CONTENTS

PREFACE.....	v
<i>Christopher B Strong</i>	
Chapter 1	ABU DHABI 1
<i>James Comyn and Patricia Tiller</i>	
Chapter 2	ALGERIA..... 10
<i>Samy Laghouati</i>	
Chapter 3	ANGOLA..... 20
<i>André Duarte Figueira, Lourenço Vilhena de Freitas, Francisco Silva Neves and João Sequeira Sena</i>	
Chapter 4	ARGENTINA..... 38
<i>Pablo J Alliani and Fernando L Brunelli</i>	
Chapter 5	AUSTRIA..... 54
<i>Andreas Gunst, Oskar Winkler, Kenneth Wallace-Mueller and Christoph Schimmer</i>	
Chapter 6	BANGLADESH 64
<i>Suban Khan and Sayedul Munim</i>	
Chapter 7	BRAZIL..... 76
<i>José Roberto Faveret Cavalcanti, Ivan Lafayette Bandeira Londres and Lucas Carvalho de Souza</i>	
Chapter 8	DENMARK..... 88
<i>Michael Meyer</i>	
Chapter 9	DOMINICAN REPUBLIC 101
<i>Ricardo González Rodríguez</i>	

Contents

Chapter 10	ECUADOR.....	111
	<i>Sebastián Cortez Merlo, Francisco Larrea Naranjo and María Elena Sanmartín</i>	
Chapter 11	EGYPT	122
	<i>Girgis Abd El-Shahid and Asmaa Badawy</i>	
Chapter 12	GHANA	137
	<i>Ferdinand D Adadzi and Nana Serwah Godson-Amamoo</i>	
Chapter 13	GREENLAND	163
	<i>Michael Meyer</i>	
Chapter 14	INDIA	173
	<i>Venkatesh Raman Prasad</i>	
Chapter 15	INDONESIA.....	190
	<i>Darrell R Johnson, Fransiscus Rodyanto and Revaldi N Wirabuana</i>	
Chapter 16	IRAQ	204
	<i>Christopher B Strong</i>	
Chapter 17	IRAQI KURDISTAN	215
	<i>Florian Amereller and Dablia Zamel</i>	
Chapter 18	RUSSIA	226
	<i>Natalya Morozova</i>	
Chapter 19	SOUTH AFRICA	240
	<i>Matthew Ash, Kelsey Pailman and Shuaib Ramjam</i>	
Chapter 20	TRINIDAD AND TOBAGO	252
	<i>Jon Paul Mouttet, Lesley-Ann Marsang and Simonne Jaggernaut-Clarke</i>	
Chapter 21	UNITED KINGDOM	263
	<i>Michael Burns and Naomi Nguyen</i>	
Appendix 1	ABOUT THE AUTHORS.....	277
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	291

PREFACE

International oil and gas law is a fascinating field, sitting at an intersection of law, politics and business. Practitioners in this field must be familiar not only with international norms and practices but also with local legal and regulatory requirements, which can vary substantially from jurisdiction to jurisdiction. The task can be daunting, especially in the context of fast-paced transactions or urgent legal or operational issues.

The Oil and Gas Law Review is intended to serve as a starting point for practitioners in gaining an understanding of the key legal requirements in the jurisdictions in which they may be advising clients on transactional and operational matters. The thinking behind the subtopics it covers has been to try to answer those questions that come up most frequently when dealing with a new or unfamiliar jurisdiction. Although not a substitute for detailed local law advice, the hope is that it will nevertheless serve as a reference guide and point users in the right direction when considering local legal issues.

I would like to thank the many experts who contributed to this volume. Without their substantial efforts, a work such as this would not be possible. Thanks also to the editors and publishers of *The Oil and Gas Law Review* for having the vision to publish a volume such as this and for their efforts in making it such a success.

Christopher B Strong

Vinson & Elkins LLP

London

October 2021

DOMINICAN REPUBLIC

*Ricardo González Rodríguez*¹

I INTRODUCTION

The Dominican Republic is considered a frontier region with promising potential for the upstream oil and gas industry, mainly because of its geological setting and the long-known presence of crude in the subsoil. Despite this opportunity, historically the country has seen little or no activity in the exploration and production hydrocarbons sector.

Although the exact amount of national oil reserves remains unknown (and production has not yet started), there are currently four frontier basins of interest in the Dominican Republic, namely: the Cibao Basin, the Enriquillo Basin, the Azua Basin and the San Pedro de Macorís Basin.²

Now, having successfully concluded its first licensing round for oil and gas in November 2019 with the award of a production sharing contract (PSC) to a US multinational corporation, the government hopes to continue to entice key investors to this incipient market and to build on this effort through the launch of successive licensing rounds, and by providing flexible contract terms and guarantees, favourable fiscal terms, and a solid legal framework and policy for the development of upstream activities.

These licensing rounds are part of the country's National Development Strategy for 2030, established by Law 1-12, dated 25 January 2012, which aims to develop a coherent and sustained strategy for short-, medium- and long-term onshore and offshore oil exploration and exploitation, while ensuring environmental sustainability.

Going forward, to retain the interest of potential investors and drive the growth of the Dominican upstream oil and gas market, it will be critical that the state continues to provide attractive contractual terms, along with a stable, robust and transparent set of rules applicable to the upcoming public tender processes. Moreover, investors will closely observe the performance of the PSC awarded in the first licensing round and will likely use it as a reference point to shape their own outlook as to the progress and maturity of the industry.

II LEGAL AND REGULATORY FRAMEWORK

The 2015 Dominican Constitution provides in its Article 14 that the non-renewable natural resources in the territory and maritime spaces under national jurisdiction are a patrimony of the nation. Further, Article 17 of the Constitution establishes that mining and hydrocarbon

1 Ricardo González Rodríguez is an associate at Jiménez Peña.

2 Dominican Republic 1st Licensing Round. 'Prospectivity', n/d, <https://roundsdr.gob.do/prospectivity>, last accessed on 8 July 2021.

deposits and, in general, non-renewable natural resources may be explored and exploited only by private parties, under sustainable environmental criteria, by virtue of concessions, contracts, licences, permits or quotas, under the conditions determined by law. The exploration and exploitation of hydrocarbons in the national territory and in maritime areas under national jurisdiction are considered activities of high public interest.

i Domestic oil and gas legislation

In the Dominican Republic, oil and other hydrocarbons are expressly excluded from the scope of Mining Law 146, dated 4 January 1971. Thus, the primary legislation governing the onshore and offshore upstream oil and gas industry is Law 4532-56, dated 31 August 1956, amended by Law 4833, dated 17 January 1958 (Law 4532). This law provides that contracts executed by the executive branch for upstream hydrocarbons are subject to the approval of the National Congress and, once approved, may not be revoked, altered or modified without the consent of the contracting parties. In addition, the contractual rights for exploitation in favour of private parties shall be granted for an unlimited time and with the surface extension agreed upon.

Other important legal norms regarding upstream oil and gas are:

- a* Presidential Decree 83-16, dated 29 February 2016, which establishes the regulation for hydrocarbons exploration and production (Hydrocarbons Regulation);
- b* General Environmental Law 64-00, dated 18 August 2000, which provides the framework for the protection, restoration and improvement of the environment, as well as for the regulation of environmental authorisations applicable to projects with varying degrees of environmental impact, such as the upstream hydrocarbons sector (Law 64-00);
- c* Law 100-13, dated 30 July 2013, which creates the Ministry of Energy and Mines (MEM) (Law 100-13);
- d* Law 47-20 on public-private partnerships, dated 20 February 2020, which establishes a legal framework to regulate the start, selection, awarding, contracting,³ execution, follow-up and termination of public-private alliances for projects of social interest, such as the exploration and exploitation of hydrocarbons in the country (Law 47-20);
- e* Resolution R-MEM-REG-001-2016, issued by the MEM on 8 January 2016, which requires that any party interested in performing geological and geophysical studies to evaluate the country's hydrocarbon potential obtains a permit from MEM (Resolution 001-2016); and
- f* Resolution R-MEM-REG-012-2019, issued by MEM on 4 February 2019, which requires that any party interested in drilling wells for the exploration and production of hydrocarbons includes geophysical recordings of each well in its work programme, to determine the porosity, permeability, density, clay content, formation fluid, well calibration and dip of the strata or layers that make up the subsoil (Resolution 012-2019).

3 By virtue of Article 4.4 of Law 47-20, the awarding or contracting entity of a public-private partnership (PPP) contract is that which is most closely linked to the nature and object of the contract. In the case of upstream hydrocarbon activities, the PPP is equivalent to the PSC awarded by and executed with MEM, as the entity in charge of the industry.

ii Regulation

The MEM is the governing public body for upstream oil and gas in the Dominican Republic,⁴ in charge of the formulation and administration of the national energy and metallic and non-metallic policies. Consequently, it supervises other agencies linked to upstream oil and gas, such as the National Energy Commission (CNE), the National Geological Service (SGN), and the General Agency of Mining. Among others, MEM has the mandate to:

- a* formulate, direct, and coordinate the national policy on exploration, exploitation and transformation of metallic and non-metallic minerals;
- b* stimulate the prospecting, exploration and exploitation of energy resources of hydrocarbons, coal and natural gas;
- c* order or carry out the necessary studies to evaluate the potential of hydrocarbons;
- d* grant exploration permits and concessions for the exploitation of hydrocarbons; and
- e* coordinate with the Ministry of Environment and Natural Resources (MIMARENA) the evaluation procedures for hydrocarbon exploration and exploitation proposals.

In this regard, MIMARENA formulates, executes, administers and supervises the national policy for the protection of the country's environment and natural resources. It has the power to evaluate projects that may cause an environmental impact and to grant and oversee the corresponding environmental authorisations, including sanctions for non-compliance.

iii Treaties

The Dominican Republic is a contracting party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), ratified on 11 April 2002, and to the 1975 Inter-American Convention on International Commercial Arbitration (Panama Convention), ratified on 2 February 2008.

It is also a contracting party to several bilateral (BITs) and multilateral (MITs) investment treaties. In respect of the former, the country has ratified BITs with Spain (1995), Ecuador (1998), Taiwan (1999), Haiti (1999), France (1999), Cuba (1999), Chile (2000), Argentina (2001), Finland (2001), Morocco (2002), Panama (2003), Switzerland (2004), South Korea (2006), Italy (2006) and the Netherlands (2006). It has also signed and ratified a 2019 Economic Partnership Agreement (EPA) with the United Kingdom, pending ratification by the latter. In relation to the MITs, the most significant in place are the 2004 Dominican Republic-Central America Free Trade Agreement (DR-CAFTA) and the 2008 Economic Partnership Agreement between the Caribbean Forum (CARIFORUM) and the European Union.

The Dominican Republic has entered into two double taxation treaties in force: one with Canada (1977), which deals with taxes on income and capital, and the other with Spain (2014), covering income tax.

⁴ The downstream oil and gas segment is regulated by the Ministry of Industry and Commerce (MIC), but it does not have any oversight over the upstream segment, which is separated and regulated principally by MEM.

III LICENSING

The licensing regime for upstream oil and gas in the Dominican Republic is structured by way of international public tenders for the award of technical evaluation contracts or PSCs executed with MEM, in representation of the state, through a special power of attorney granted by the Dominican president.

These public tenders are carried out by MEM, subject to the public procurement legislation in force, that is, Law 340-06 on purchasing and contracting of goods, services, works and concessions, dated 18 August 2006, amended by Law 449-06, dated 6 December 2006, and Presidential Decree 543-12, dated 6 September 2012, which approves the regulation application for Law 340-06.

In this regard, technical evaluation contracts authorise companies to evaluate hydrocarbon potential and to identify the zones of greatest prospective interest within a certain area. On the other hand, PSCs authorise contractors to explore and exploit hydrocarbons in a specific area, while the state receives a royalty consideration for the transfer of the ownership rights of the hydrocarbons extracted by the contractor. The Hydrocarbons Regulation also recognises the possibility of executing other types of contracts for upstream oil and gas, such as maximum quota contracts and public-partnership contracts.

Under Article 31 of the Hydrocarbons Regulation, PSCs must stipulate, at least, the following:

- a* the object, the application and the specific area or contracted area;
- b* the terms and conditions under which the exploration, exploitation or technical evaluation rights are granted;
- c* the minimum investment commitment by the contractor, set by MEM;
- d* the terms and conditions of the work during the exploration or exploitation phases, which shall include those related to the technical control of the operations, work schedules, budget, production, royalty, supply, and the possibility of revising it when circumstances so require;
- e* all matters related to the use of gas;
- f* the maximum validity term, a unilateral termination clause in favour of the state, the rights and conditions, the obligations of decommissioning, rehabilitation or remediation in the event of abandonment or expiry of the term, the penalties and the liability of the parties;
- g* the taxes applicable to the contractor, in accordance with the legislation in force;
- h* the performance bond by the contractor, to ensure the correct execution of the PSC and the guarantee fund for the protection of the environment and natural resources; and
- i* the obligation to previously submit to MEM any transfer, lease, assignment or legal continuity of the upstream rights, as well as changes in the shareholding composition, for its approval and registration.

IV PRODUCTION RESTRICTIONS

In the Dominican Republic, there are no legal restrictions on oil and gas production entitlements, export or sale of production into the local market. Notwithstanding, under the model PSCs approved for the first licensing round, the state (through MEM) shall have a preference right to acquire all or part of the hydrocarbon production owned by the contractor.

In respect of price setting, Article 35 of the Hydrocarbons Regulation establishes that national production of hydrocarbons is primarily destined to cover the needs of the country

and the national reserve, as defined by the state, through MEM. For this purpose, every contractor is obliged to sell to the state the production necessary to satisfy the domestic market, at the market price determined and fixed in accordance with the prices of the international market for equivalent crude oil. Further, MEM must issue the necessary norms for the establishment of the procedure of price determination, although to date this is still pending.

V ASSIGNMENTS OF INTERESTS

In accordance with Article 5 of Law 4532, unless the executed corresponding PSC provides otherwise,⁵ the contractor may assign it to another person or entity which assumes all obligations and responsibilities arising from such contract, or subcontract with other persons or entities all or part of the exploration and production activities and benefits recognised in the PSC, as well as encumber its contractual interest as security for the financial operations it carries out. All whole or partial assignments, encumbrances, transfers or leases of such contracts, as well as any changes to the shareholding structure of the contractor company, must be notified and approved by MEM before their execution, pursuant to Articles 6 (letter h), 31 (letter j) and 33 of the Hydrocarbons Regulation, and later registered with the General Agency of Mining, as mandated by Articles 5 (paragraph) and 7 of Law 4532.

To this end, the assignee company must meet the same conditions and requirements as the assignor contractor. When the assignment or transfer is partial, the assignor and the assignee shall be jointly and severally liable for compliance with the terms of the contract before the state and third parties.

Neither the legislation in force nor the model onshore and offshore PSCs approved by MEM for the first (and presumably subsequent) licensing rounds recognise a right of first refusal or preferential purchase in favour of the state in case of contract transfer. Similarly, the structure of the transfer (direct transfer versus change of control) would not, in principle, affect the government's approval process, and there are no provisions requiring the payment of a consideration to the state (e.g. cash payments, amendments to underlying licence terms) as a condition to grant the assignment or transfer approval.

In any case, given that the Dominican Republic just recently awarded its first and (to date) only PSC in November 2019, there have been no cases to draw from dealing with requests for authorisation of assignment, encumbrance or transfer of PSCs. Currently, based on the model PSCs used for the first licensing round, MEM has 15 business days to respond to any such request, either authorising or rejecting it, including its motivations for the decision.

VI TAX

Pursuant to Article 6 of Law 4532, companies that have executed PSCs with MEM shall enjoy the exonerations and reductions of taxes, fees or duties specified in the corresponding contract.

⁵ The model PSCs approved for the first licensing round mirror the provisions of Law 4532 and the Hydrocarbons Regulation on the assignment of interests.

In general terms, the tax regime applicable to upstream oil and gas operators in the Dominican Republic is the following:

- a* tax stabilisation: model PSCs contain a stabilisation clause by virtue of which the state guarantees the contractor tax stability for the full validity period of the PSC, so that contractors will only be subject to the tax regime in force as of the contract signature date;
- b* minimum state participation: to ensure an appropriate distribution of project benefits, PSCs also include a 'minimum state participation' (PME) provision, under which contractors are required to pay the state at least 40 per cent of the benefits attributable during the life of the project, equivalent to the total oil revenues;
- c* local governments contribution: according to Article 117 of Law 64-00, in the case of non-renewable natural resources, the state shall allocate 5 per cent of the net benefits received in favour of the municipalities in which the exploitation is executed to develop projects identified in the corresponding municipal development plans elaborated by the Ministry of Economy, Planning and Development (MEPYD). The highest amount to be assigned for the corresponding municipalities shall be US\$5 million per year by contract;
- d* shared state income: contractors shall pay the state a monthly participation income, calculated based on a formula described in the model PSCs that takes into account, among other factors, the average daily production in the corresponding month and the commercialisation monthly average price on the wellhead;
- e* income tax: upstream oil and gas activities are subject to corporate income tax at a rate of 27 per cent, pursuant to Law 11-92, which approves the Tax Code, dated 16 May 1992 (Tax Code). The recoverable costs for income tax include the costs and investments incurred during the exploration and productions phase in the contract area. In this regard, admitted as recoverable costs are all expenditures indispensable for the performance of oil and gas activities, counted from the effective date of the PSC, capped at 95 per cent of the gross income per period;
- f* import duties: PSC contractors may enter into the country the machinery and equipment necessary for oil exploitation under a temporary admission regime, supervised by the General Agency of Customs (DGA);
- g* rental of surface rights: depending on the phase of the project, contractors are required to make annual rental payments to the state, as follows:
 - for the first exploration phase, US\$25 per square kilometre;
 - for the subsequent exploration phases, US\$50 per square kilometre; and
 - for the production phase, US\$500 per square kilometre; and
- h* overseas payments: during the exploration phase, payments made abroad to non-residents shall not be subject to a withholding tax. Conversely, in the production phase, payments made abroad to non-residents are subject to a 10 per cent withholding tax. Normally, overseas payments are taxed at the same rate as income tax (i.e., 27 per cent), but the model PSCs grant a preferential fiscal treatment to investors in the form of this cutback to 10 per cent.

VII ENVIRONMENTAL IMPACT AND DECOMMISSIONING

As established above, the main legislation applicable to oil and gas operations in the country is Law 64-00, which outlines the framework for the protection, restoration and improvement of the environment and regulates environmental authorisations for all types of projects. MIMARENA is the principal regulatory agency responsible for environmental matters. It directs and executes the national environmental policy, evaluates the impact of projects, infrastructure, industries or activities that, because of their nature, may affect the environment or natural resources in any way and grants the corresponding authorisation, according to the magnitude of the effects that they may cause.

On this subject, MIMARENA has classified different kinds of projects into four categories, depending on their potential effects to the environment. Such classification determines the requirements that companies will have to submit to MIMARENA upon requesting the authorisation in question. The interested party must apply for an 'Environmental Authorisation for New Project' with MIMARENA, which evaluates the request and determines the authorisation required for the project.

In the case of upstream oil and gas operations, pursuant to Resolution 0013-2014, issued by MIMARENA on 22 September 2014, which approves the regulation for the environmental evaluation procedure, both oil wells and natural gas and carbon ore exploration are classified as 'A' type projects, meaning that they may cause significant potential impact and thus require the issuance of an environmental licence, whereas oil exploration without industrial testing is classified as a 'B' type project, equivalent to a moderate potential impact and requiring the obtention of an environmental permit.⁶

As part of the approval process, class 'A' projects must prepare and present an environmental impact study with MIMARENA, whereas class 'B' projects must deliver an environmental impact declaration, in both cases based on the terms of reference issued by the institution's Environmental Evaluation Agency for the project in question.

In respect of the decommissioning of upstream hydrocarbon projects, the model PSCs contain the contractual requirements for decommissioning of the contract areas. In this regard, the contractor shall be obliged to carry out all the operations related to the abandonment of the contract area. Further, the project development plan, as well as each work programme and budget submitted for the approval of MEM, shall contain a section related to the abandonment, including an estimate of the activities necessary for the final plugging of wells, restoration, remediation and, when applicable: (1) environmental compensation of the contract area; (2) uninstallation of machinery and equipment; and (3) orderly and free delivery of debris and rubbish from the contract area.

Said activities must be carried out in accordance with the best industry practices and the applicable regulations. Before plugging a well or uninstalling any equipment, the contractor must notify MEM at least 60 calendar days in advance.

Finally, according to the model PSCs, contractors shall open a custody or escrow account in a banking institution approved by MEM, to create a reserve to fund decommissioning

⁶ The other two categories of MIMARENA environmental authorisations are class C, for projects with low potential impact, which are issued an 'Environmental Record', and class D, for minimal potential impact projects, which must obtain a 'Minimal Impact Certificate'.

operations of the project. Contractors may not make use of these funds for any purpose other than carrying out decommissioning operations and shall not have the right to grant them as guarantee, assign or dispose them in any way.

VIII FOREIGN INVESTMENT CONSIDERATIONS

i Establishment

Foreign investors with oil and gas operations in the country may act through a branch in the national territory (considered as a permanent establishment for tax purposes), in which case they shall be fully recognised and have the same rights and obligations as national corporations, pursuant to Law 479-08 on Companies and Limited Liability Proprietorships, dated 11 December 2008, amended by Law 31-11, dated 8 February 2011 (Law No. 479-08). Further, under Law 479-08 and the Hydrocarbons Regulation, said foreign corporations are required to submit themselves to Dominican law, establish a domicile in the country and matriculate in the Mercantile Registry of the competent Chamber of Commerce and Production and in the National Taxpayers Registry (RNC) of the General Agency of Internal Revenue (DGII).

On the other hand, investors may opt to establish a local subsidiary of the foreign corporation for their operations. In this regard, Law 479-08 recognises various types of companies, of which the most frequently used are limited liability companies, corporations and simple corporations, given that they provide more flexible structures, while the liability of partners is limited to their respective contributions. As an overview, below are the basic characteristics of the aforementioned corporate vehicles:

- a* limited liability companies (LLC): formed with a minimum of two members and a maximum of 50, who are not personally liable for corporate debts. In the event an LLC should be composed of more than 50 members, it must transform into a corporation, within a two-year term. For their formation and operation, these companies do not need to have a minimum authorised or paid-in capital;
- b* corporations: may be public or private in nature and are formed by two or more persons under a corporate title, composed exclusively of shareholders, whose liability is limited to their capital contributions. The minimum authorised capital for corporations is 30 million Dominican pesos, of which at least 10 per cent must be paid-in capital. As opposed to other types of corporate vehicles, corporations are legally allowed to make public offering of securities; and
- c* simple corporations: similar requirements and characteristics to those of ordinary corporations, but with a reduced minimum authorised capital of 3 million Dominican pesos and minimum paid-in capital of 300,000 Dominican pesos.

Generally, the establishment of a local subsidiary can be completed in three to four weeks. To this end, the interested party must complete the following steps:

- a* register a commercial name for the company in the National Office of Industrial Property (ONAPI);
- b* pay the incorporation tax with the DGII (1 per cent of authorised capital);

- c* matriculate the company in the competent Chamber of Commerce and Production, by filing the executed incorporation documents (e.g., by-laws, minutes of constitutive general assembly, trade name certificate issued by ONAPI, receipt of payment of incorporation taxes); and
- d* register the company in the National Taxpayers Registry (RNC) of the DGII.

ii Capital, labour and content restrictions

The Dominican Republic does not have any restrictions in place regarding the movement of capital or access to foreign exchange.

There are, however, certain local hiring requirements applicable to oil and gas operations and which potential investors must take into consideration. Under Article 135 of the Labour Code, at least 80 per cent of the total number of workers of a company must be of Dominican nationality. Likewise, under Article 136 of the Labour Code, the wages received by Dominican nationals must amount, in aggregate, to at least 80 per cent of the value corresponding to the payroll of the entire personnel. Workers who carry out technical work, supervision or management are exempt from the provisions of said Article 136.

iii Anti-corruption

There have been no reported corruption issues related to oil and gas matters in the Dominican Republic, although the industry is still emerging. As per the legal framework, the country is a party to the Inter-American Convention against Corruption (IACAC), ratified by Resolution 489-98 issued by the National Congress on 1 November 1998. There are also several laws that prohibit and deal with corruption in the public sector, the most important of which are Law 41-08 on Public Service, dated 16 January 2008, the 1884 Criminal Code, Law 448-06 on Bribery in Trade and Investment, dated 6 December 2006, and Law 120-01, which creates the Ethics Code for Public Servants, dated 20 July 2001.

IX CURRENT DEVELOPMENTS

In July 2019, the Dominican Republic launched its first upstream oil and gas licensing rounds, through an international public tender, which concluded in November 2019 with the award of a PSC (signed in October 2020) to Apache Dominican Republic Corporation, LDC, a subsidiary of the US firm Apache Corporation, for the exploration and exploitation of San Pedro de Macoris offshore basin.⁷ The contract was also approved by the National Congress, as required by Dominican law.

Under the contract, Apache will make an initial investment of US\$5 million for exploration in the first four years, at its own cost and risk. In the second phase, the company will invest another US\$8 million for the next three years. If the oil discovery is successful, a third phase will see Apache make an investment of around US\$100 million in exploitation of the exploratory well.⁸

⁷ bnamericas, 'Dominican Republic signs contract with Apache Corporation for exploration and exploitation of hydrocarbons in the SPM basin', 22 October 2020, www.bnamericas.com/en/news/dominican-republic-signs-contract-with-apache-corporation-for-exploration-and-exploitation-of-hydrocarbons-in-the-spm-basin, last accessed on 8 July 2021.

⁸ *ibid.*

This first licensing round had 14 blocks on offer, including 10 onshore blocks (six in the Cibao Basin, three in the Enriquillo Basin and one in the Azua Basin) and four offshore blocks (all in the San Pedro de Macorís Basin), with a maximum size/block of 500 square kilometres onshore and 2,500 square kilometres offshore.⁹

Prior to the covid-19 pandemic, the Dominican government had already announced that it would launch a second auction covering the areas not awarded during the first round and others not previously offered, as proposed by stakeholders and approved by MEM as part of the second-round schedule.¹⁰ However, this new round has been delayed, presumably until investment conditions improve.

To facilitate information and expedite the assessment process for stakeholders, MEM also created the National Hydrocarbon Database (BNHD), a free public access digital compendium and archive ‘for all geological, geophysical and seismic information collected through hydrocarbons exploration and prospecting on Dominican soil and sea dating back to 1904’. The database contains 1,491 maps and drawings, 805 seismic profiles, 212 well logs, 321 files or reports and 209 ‘9-track’ and three ‘8-track’ magnetic tapes with seismic lines in various regions of the country.¹¹

Further, the Dominican Republic joined the Extractive Industries Transparency Initiative (EITI), a multi-stakeholder organisation that sets the global standard for the good governance of oil, gas and mineral resources, and is currently in the process of validation under the 2016 EITI Standard. In this regard, the most recent decision by the EITI Board, dated 14 February 2020, recognised that the country ‘has made meaningful progress in implementing the 2016 EITI Standard’, and granted a 6-month term, until 14 August 2020 (later extended to 1 April 2023), to allow the country to ‘carry out corrective actions regarding the requirements relating to production data, subnational transfers, and the outcomes and impact of EITI implementation’.¹²

9 Dominican Republic 1st Licensing Round, ‘Exploration Opportunities’, 10 July 2019, <http://roundsdr.gob.do/wp-content/uploads/2019/07/2-Technical-20190709-v9.pdf>, last accessed on 8 July 2021.

10 Dominican Republic 1st Licensing Round, ‘Licensing Round Block Award’, 27 November 2020, <https://roundsdr.gob.do/category/latest-news>, last accessed on 8 July 2021.

11 Ministry of Energy and Mines. ‘National Hydrocarbons Database’, n/d, <https://bndh.gob.do/us>, last accessed on 9 July 2021.

12 Extractive Industries Transparency Initiative (EITI) Board, ‘Decision 2020-09/BM-46 on the 2019 Validation of the Dominican Republic’, 14 February 2020, <https://eiti.org/board-decision/2020-09>, last accessed on 9 July 2021.

ABOUT THE AUTHORS

RICARDO GONZÁLEZ RODRÍGUEZ

Jiménez Peña

Ricardo González holds a law degree, *summa cum laude*, from Universidad Iberoamericana (UNIBE) in Santo Domingo, Dominican Republic, an LLM in Administrative Law (joint degree) from Universidad de Salamanca (USAL) and the Instituto Global de Altos Estudios en Ciencias Sociales (IGLOBAL) and an LLM in Energy Law from University College London (UCL), London, United Kingdom.

JIMÉNEZ PEÑA

Av. Winston Churchill 1099
Citi Tower at Acrópolis, 14th Floor
Piantini
Santo Domingo 10148
Dominican Republic
Tel: +1 809 955 2727
Fax: +1 809 955 2727
rgonzalez@jpadvisors.do
www.jpadvisors.do

an LBR business

ISBN 978-1-83862-807-9