

## **Q&A with the Legal Head of Lebanese Petroleum Administration**

The Lebanese Petroleum Administration is a relatively new public entity which has been tasked to manage and control petroleum activities in Lebanon. We have interviewed the former Chairman of the Lebanese Petroleum Administration Mr. Gaby Daaboul who is currently serving as the Head of its Legal Department. The answers below are for informational purposes only and cannot be used or considered as legal advice.

### **1- Could you briefly describe the role of the Lebanese Petroleum Administration?**

The Offshore Petroleum Resources Law number 132 (“**OPR Law**”) was enacted on 24/08/2010. Article 10 of the OPR Law created the Lebanese Petroleum Administration (“**LPA**”) and defined its authorities. The establishment, structure, and operations of the PAA is regulated by decree no. 7968 which was issued on 7 April 2012 by the Council of Ministers (“**LPA Decree**”).

Pursuant to article 10 of the Petroleum Administration has the following duties and powers:

1. Conducting studies to promote the Lebanese Petroleum potential.
2. Reporting to the Minister of Energy and Water about the assessment of qualifications and capabilities of applicants and applications for petroleum rights.
3. Drafting invitations for bids, conditions for applications, model exploration and production agreements and appurtenant licenses and agreements in accordance with this law.
4. Assisting in negotiating exploration and production agreements and submitting reports on results of negotiations to the Minister of Energy and Water to enable the Council of Ministers to take the final decision.
5. Managing, monitoring, and supervising petroleum activities and the proper implementation of licenses and agreements, and in this regard, submit quarterly reports to the Minister of Energy and Water for approval.
6. Evaluating plans for development, transportation and cessation of petroleum activities and decommissioning of facilities.

7. Management of petroleum activities data.
8. Establishing, keeping and managing a petroleum register.

The LPA has some considerable independence since it has a financial and administrative autonomy with the Minister of Energy and Water exercising basic tutelage and supervisory authority (with some financial and administrative decisions being subject to his approval). The LPA is not governed by the provisions of decree 4517 of 13/12/1972 related to the general system of public institutions nor subject to the council of civil service, and is only subject to a posteriori audit of the Public Audit Court.

## **2. What is the exact role of the Legal Affairs Department of the LPA?**

There are six administrative units forming the LPA: (1) the Unit of Strategic Planning; (2) the Unit of Technical & Engineering Affairs; (3) the Unit of Geology and Geophysics; (4) the Unit of Legal Affairs; (5) the Unit of Economical & Financial Affairs; and (6) the Unit of Quality, Health, Safety & Environment (QHSE). The LPA Board is formed by the Heads of these Units and each Head shall rotationally chair the Board for one year.

Article 9 of the LPA Decree regulates the Legal Affairs Unit. Latter is responsible for undertaking all legal matters and issues related to the exploration and production of oil and gas, including inter alia:

- 1- Monitoring the compliance of rights-holders and operators with all applicable petroleum related regulations.
- 2- Supervising the management of the petroleum register.

- 3- Follow-up on licensing and the processes leading to the issue of licenses.
- 4- Preparing legal studies, draft laws and decrees as required and to modernize the applicable legal framework.
- 5- Liaising with operators or right-holders from a legal point of view.
- 6- Preparing files related to conflicts, settlement, and arbitration of claims.
- 7- Preparing recommendations and legal opinions for the other units of the Petroleum Administration.
- 8- Preparing and negotiating agreements with contractors.

## **2- What is briefly the pre-qualification process for right holders?**

In a nutshell, there are four criteria for pre-qualifying petroleum companies seeking to participate in the tendering process. The ministerial decree 9882/2013 provides details about these criteria which essentially revolve around the following:

- Legal: the company needs to be a joint stock company providing petroleum activities. The LPA considers as joint stock company any company which (i) capital is composed of shares that can be transferred without any preemptive rights granted to the existing shareholders, with (ii) shareholders having a limited liability, and (iii) management entrusted to a board of directors or an equivalent body.
- Financial: the operator needs to have an amount of assets totaling at least 10 billion US\$ and non-operators need to have a total amount of at least 500 million US\$.
- Technical: operators need to have at least one petroleum development in water depths in excess of 500 meters and non-operators need to prove that they already have an established petroleum production.
- QHSE: operators and non-operators need to prove compliance with of HSE management compliance systems as detailed by the above-mentioned decree.

### **3- What are briefly the bidding conditions and awarding process**

Decree number 43 dated 19 January 2017 includes the Tender Protocol (TP) related to the offshore licensing round, and the model of the Exploration and Production Agreement (EPA). The TP constitutes annex number 1 of decree 43, and it determines the bidding process that prequalified companies must abide by during the first licensing round. The TP also describes in details the evaluation criteria of the bidding process, which will result in the allocation of blocks to the winning consortium and the start of petroleum activities.

It is important to note that the OPR Law mentions that the EPA needs to include three right holders: one operator with a minimum of 35% participating interest and two right holders who are non-operators with a minimum participating interest of 10 %. The rationale behind this is based on the idea that Lebanon does not have as a country an extensive experience in the oil and gas sector and would prefer to deal with a consortium ran by a management committee overseeing its vested interests rather than by one operator. Non-operators are companies who could be operators or production companies which are not qualified to be operators or even if eligible seek to be only participating in a different capacity.

Applications shall be submitted in compliance with the TP conditions (such as the submission of a bid bond of 5 million USD and the purchase of seismic and geographic data for the block being tendered). Each applicant (that is a consortium of three individual pre-qualified companies) can apply for a maximum of three blocks, and cannot be part of more than one consortium for each block. Technical offers will be assessed on 30% of the general evaluation and the commercial offer shall count for the remaining 70% of the assessment grade. The company which obtains the highest grade will be considered as the provisional winner. The Minister of Energy and Water and LPA can negotiate changes in the technical offer but not in the commercial one and can also negotiate with the runner up bidder in case the provisional winner does not accept the proposed technical changes. The winning applicant will be asked to provide an executed EPA along with all the guarantees mentioned therein (parent company guarantee, minimum work commitment

guarantee, corporate guarantee, etc.). If the Council of Ministers accepts the executed EPA, the Minister of Energy and Water shall sign the EPA.

**4- Is there any system in place for registering and qualifying service companies (companies which are going to be subcontractors to main operators in different services, such as drilling, catering, life support, etc.)?**

The LPA does not pre-qualify service companies but major contracts for the procurement of goods and services for petroleum activities shall be subject to public tender. The quality, price, delivery and guarantees offered shall be considered when evaluating bids and awarding contracts. Major contracts mean any contract that materially or substantially affects the design or functionality of the facilities or the development or production or management of the petroleum resources. Major contracts mean also contracts of substantial value, which the performance or non-performance of the contract may substantially affect the economy of the project or the financial strength of the operator or right holder.

**5- Would operators have to notify the LPA about all their tenders with service companies?**

All contracts for an amount higher than 50,000 US\$ need the approval of the Minister of Energy and Water as well as the LPA. This has been mentioned in article 27 of the EPA. The LPA shall be entitled to attend bidding evaluation sessions or to request to be provided with all the results and documentations to scrutinize them from a technical and financial perspective before providing its approval. All contracts awarded (whether below 50,000 US\$ or not) need to be notified to the LPA which shall keep track of all the activities of the right holders. In fact, the LPA is establishing the Petroleum Register which would keep track of all the data and activities concerning reconnaissance, petroleum rights, operators, area (block) coordinates, mortgaging assignment and forced sale.

**6- Are there any regulations for supporting Lebanese services companies or Lebanese goods?**

Article 67 of the OPR Law requires operators to provide priorities for Lebanese companies in the tendering process if they can provide quality similar to those of foreign competitors. Article 157 of the PAR binds the right holders to provide preferential treatment to the procurement of Lebanese originating goods and services whenever such goods and services are internationally competitive with regards to quality, availability, price and performance. Lebanese originating goods and services are those that in substance or by value added predominantly manufactured, constructed, or performed in Lebanon, by Lebanese or by an entity owned and controlled by Lebanese. Moreover, the EPA mentions that Lebanese goods shall not be disqualified in a public tender but still be given a priority if they have been quoted five (5) % higher than foreign similar goods and Lebanese service companies shall as well not be disregarded if they quoted their services ten (10) % higher than those of a foreign company.

**7- Is there or do you anticipate any support for Lebanese skilled and unskilled labor? Would there be a percentage or a quota for employing locals?**

Article 67 of the OPR Law specifies that right holders shall employ qualified Lebanese personnel whenever available. The EPA mentions that at least 80% of the employees must be Lebanese nationals. The right holder shall give priority to training of Lebanese to facilitate the employment of Lebanese at all level of right holder's or contractor's organizations. Employees may be trained in Lebanon or abroad as required by the training programs and as to be specified in the EPA.

**8- How can we define Lebanese companies?**

These are companies in which 51% of the share capital is Lebanese. The majority of the shareholders shall also be Lebanese nationals.

**9- Corporate Social Responsibility (CSR): what has been planned so far?**

The EPA mentions about the need for right holders to develop and implement CSR policies. The LPA did not develop yet its own vision in this respect, although this is to be done soon. Note however that a strategic cooperation agreement has already been signed between the United Nations Development Program and the LPA for assistance in almost all of CSR matters. The LPA may also create its own CSR supervision department soon.

**10- Import and Export of Petroleum Equipment: do you expect any special procedure in this respect?**

A special law is currently being debated at the Parliament and aiming at exempting petroleum-related equipment from all import taxes and duties under when some conditions apply. The resale of said equipment would be however taxed. As for import and export licenses, this will surely be required.

**11- Would there be a procedure to facilitate the stay and the activities of foreign companies? At which level?**

The LPA has a one stop shop vision on which some progress has been made. The goal is to be able to offer all government-related support by establishing liaison points at all relevant ministries (such as for issuing employment visas and residencies, tax services, etc.).

**12- Any regulations expected to be released soon?**

The petroleum legal framework is completed. But it is better for the Lebanese State to approve the Taxation Law before the deadline of the bid submission.

And it is good to mention that the LPA is currently drafting the following implementation Petroleum Register Decree

- Inspections and Monitoring Fees Decree
- Disclosing Subcontracting Decree
- Safety Zones Decree

**13- Any other legal point of relevance which you would like to mention?**

Lebanon is about to join the Extractive Industries Transparency Initiative as part of its plan to promote the open and accountable management of extractive resources. Lebanon hopes as such to address the key governance issues in the oil, gas and mining sectors.