

New legal framework for the offshore petroleum industry

On 21 August 2017 the draft of the *Law regarding some necessary measures for the implementation of the petroleum operations by the titleholders of petroleum agreements relating to offshore petroleum blocks* (the "Offshore Law") was posted for public consultation purposes on the website of the General Secretariat of the Government of Romania. In the last few years significant natural gas discoveries were reported by several titleholders of offshore petroleum concessions in the Romanian Black Sea. Though no commercial discoveries have been declared to date, some of the gas discoveries are now in an advanced phase of evaluation by the investors and are drawing closer to the date when a final investment decision should be taken if all required conditions were met. Other discoveries need further appraisal work while exploration operations continue on some of the blocks which may be conducive to new discoveries adding value to those already reported. From a legal perspective we note that to date the titleholders of offshore petroleum concessions have been confronted with two sets of stringent legal matters. The first set is related to the lack of a proper regulatory framework for the offshore development projects. Not only that there were almost no rules addressing the specific nature of offshore operations, but some provisions in the existing legislation were causing true "blockages" essentially preventing the materialization of any offshore development project. The second set is related to the need of securing stability of royalty and tax regime thus conferring the investors the required confidence that the economic and financial terms based on which their final investment decisions were taken would not be adversely changed for the entire project life. We note that the draft Offshore Law is attempting to address the above two sets of legal matters, though our opinion is that the second set needs further expansion and improvement in order to truly meet its purpose. With regard to the regulatory framework, the provisions of the draft Offshore Law could be divided, as follows:



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a) Provisions aimed to cover "gaps" and remove "blockages" existing in the current legislation. A major portion is dedicated to the creation of the necessary legal framework enabling the issuance of the "building permit" for offshore projects seen as a whole, i.e. comprising both the offshore portion of a project but also its onshore portion, including the creation of the "right of way" over the immovable public or private property of the state or local administrative units, in the absence of which no crossing of the coastal area of the Black Sea and the carrying out of construction works in that area would be possible; and

b) Provisions meant to expedite the permitting process of the projects and remove those permitting phases or requirements imposed by the existing legislation and which obviously were either impossible to satisfy or not necessary in the case of an offshore development project. We would mention here those provisions streamlining the procedure related to the preparation of the land planning documents and the special procedure envisaged for obtaining the archaeological discharge and declassification of the archaeological sites located in offshore areas. It is to be noted that the draft Offshore Law is not intended to create a regime of "special favors" applicable to the offshore titleholders and their projects, but to create a realistic legal framework which would them

to follow the required procedures by taking into account the specificity of the offshore operations and to ensure that such process could be fulfilled in a reasonable span of time and avoiding the conduct of unnecessary steps, operations or formalities. With regard to stabilization of royalties and tax regime the draft Offshore Law addresses only the issue of royalties, namely royalty rates and associated production thresholds, the stability of the fiscal regime being left outside the scope of the law. This partial approach needs to be expanded and improved in order to also encompass the stabilization of the applicable taxes and imposts and guarantee that no special, extraordinary or temporary taxes of any nature would be applicable to offshore development projects, at least for those undertaken under the petroleum agreements in effect on the date of the coming into force of the contemplated Offshore Law. Hopefully this second part of the matter of stabilization will be addressed via the proposals submitted during the public consultation process so that the final version of the draft Offshore Law to be approved by the Government in order to be sent to the Romanian Parliament would embrace both aspects, i.e. royalties and tax regime. It is clear that, should this piece of legislation be enacted in a form which follows the spirit and the final purpose envisaged by its promoter, it will not only give way to "developments for real" in the Black Sea but it will also restore the overall investors' confidence in the Government's ability to create the premises for business development in Romania.

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