

Algeria

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Overview of the current energy mix, and the place in the market of different energy sources

Hydrocarbons Sector:

The hydrocarbons adventure in Algeria started at the end of the 19th century with the first exploration in the North in 1877, in Ain Zeft near to Relizane.

Since then Algeria's hydrocarbon potential has not stopped showing its wealth through its development in the Sahara, and today with the promise of new discoveries in the North. The creation of Sonatrach in 1963 was an historical event: since then the company has become the engine of the development of the wealth of Algerian oil reserves. In Algeria, hydrocarbons and natural energy sources are generally considered to be public property.

The principle of sovereignty over national oil-field resources is stated in the 1996 Algerian Constitution, Article 17, as follows:

“Public property is a national institution property...It comprises the subsoil, mines and quarries, natural energy sources, mineral, natural and living resources of the different national maritime domain zones”, governed by Article 3 of the 05-07 Law of April 28th, 2005, relating to hydrocarbons.

Article 3 asserts again that any hydrocarbon resource, *“discovered or not discovered, localised in the soil and subsoil of the national territory and maritime areas pertaining to the national sovereignty, is the property of the national collectivity, the State of which is the emanation”*.

Moreover, Article 5 of the Law 05-07 of April 28th, 2005 provides what is meant by maritime area, which is: *“territorial waters and the exclusive economic zone”*.

The 05-07 Law of April 28th, 2005 modified by Ordinance n°06-10 of July 29th 2006

This law determines the institutional framework by separation of the public prerogatives from the economic and commercial activities previously carried out by Sonatrach S.p.A., an Algerian energy company.

Since then, Sonatrach S.p.A. has only been entitled to conduct commercial activities.

It extended the prerogatives and missions of the Minister in Charge of Hydrocarbons, who is charged with maximising the value of national hydrocarbon resources.

The law created two new corporate bodies: The Authority of Hydrocarbons Regulation (*l'Autorité de régulation des hydrocarbures*); and the National Agency of Hydrocarbons Resources Valorization (*Agence Nationale pour la Valorisation des Ressources en Hydrocarbures* “ALNAFT”).

The 13-01 Law of February 20th 2013 modifies and completes the 05-07 Law on several points.

Developments In Legislation Or Regulation

The 13-01 Law of February 20th 2013:

The last law promulgated by the Algerian legislation is the 13-01 Law of February 20th 2013 which modifies and completes the 05-07 Law.

It has to be noted that any contracts concluded before the date of publication of the 2013 Law will remain in force until the contracts' terms have ended.

The Authority of Hydrocarbons Regulation (*l'Autorité de régulation des hydrocarbures*), and the National Agency of Hydrocarbons Resources Valorization (*Agence Nationale pour la Valorisation des Ressources en Hydrocarbures* "ALNAFT") are not required to submit to the administration applicable rules such as their organisation, their functioning and the statute of their members.

They have their own capital. They are subject to commercial rules in their relations with third parties.

The 13-01 Law of February 20th 2013 expanded the remit of both agencies.

The Authority of Hydrocarbons Regulation:

This body performs the same role as any classical regulation authority. It regulates, defines, and is empowered with implementing technical standards.

This Authority has a normative power in matters of: security; hygiene; industrial security; and environmental health. It establishes the specifications for implementing transportation and storage facilities, processes transportation licence applications, and assesses open access to transportation.

According to the 2013 Law it is also responsible for:

- studying requests for the right to exercise refinement, storage and delivery of oil products activities and recommending to the Minister in Charge of Hydrocarbons to give the authorisation to exercise such activities; and
- cooperating with the Minister in Charge of Hydrocarbons on sectoral policy and contributing to the establishment of regulatory texts and technical rules that govern hydrocarbon activities.

This authority organises conciliation for disputes arising from the application of legislation such as the disputes involving pipes, transport and the storage of oil products.

The National Agency of Hydrocarbons Resources Valorization (ALNAFT):

As with the Authority of Hydrocarbons Regulation, this body performs the same role as any classical regulation authority. It regulates, defines, and is empowered with implementing technical standards.

This authority has a normative power in matters of: security; hygiene; industrial security; and environmental health. It establishes the specifications for implementing transportation and storage facilities, processes transportation licence applications, and assesses open access to transportation.

It is tasked with the following objectives, previously entrusted to Sonatrach S.p.A.:

- setting up a hydrocarbons research and exploitation data bank;
- the launch and evaluation of calls for tenders;
- concluding agreements;
- granting research and exploitation perimeters;
- follow-up, supervision and implementation of agreements;
- delivery of prospecting permits;

- tax-levying and transfer; and
- a general objective of promoting investment and developing related activities.

With regard to gas, ALNAFT is also entitled to keep and update a reserves account and periodically determine the reference prices, taking into consideration the highest among the following two prices: the price induced from each Agreement; and the reference price of the previous period.

ALNAFT is also charged with overseeing supply to the domestic market.

ALNAFT is required to keep in full confidentiality all pertinent information which it might receive from Sonatrach S.p.A.

According to the 2013 Law, it is also entitled to conclude prospecting and/or exploitation contracts.

The prospecting permit:

A distinction must be made between a permit issued for prospecting and a permit issued for research and exploitation.

Authorisation for prospecting is delivered by ALNAFT to any entity which applies for hydrocarbon prospecting rights, following the approval of the Minister in Charge of Hydrocarbons,

The prospecting permit may relate to one or several exploitation perimeters. It is granted for a maximum period of two (2) years. This period may be renewed once, for a further two (2) years. The period of extension is allowed by ALNAFT after having obtained a request from the contracting party.

All data and results obtained by the operator while carrying out prospecting works will be made available to ALNAFT.

The mining claim, on the basis of which research and/or exploitation activities are carried out, is put at the State's disposal by ALNAFT.

This permit recognises an exclusive right over the contractual perimeter of research and exploitation activities, and exploitation permits if the oil field is declared as being commercially profitable.

This permit does not give any right of property over the land. It is signed by the party contracting with ALNAFT and is approved *par decree* at the Ministers' Council Session.

It is concluded subsequently via a call for tenders, the procedures of which will be fixed through regulatory channels.

The persons who constitute the "Contracting Party" may transfer their contractual rights to another person. Such transfer is only valid after approval by ALNAFT, and is validated by an endorsement to the contract. In every case, ALNAFT gives to Sonatrach a pre-emption right on any such transfer, which it has to use within 90 days of the date of notification of the transfer.

Any transfer gives to the public treasury the right to collect 1% of the transaction value.

ALNAFT is also responsible for:

- maintaining and actualising gas reserves, national needs in gas and the quantities available for exportation;
- ensuring that the supply of provisions to the national market is ensured by the Contracting Party; and

- delivering exceptional authorisation for gas flaring and ensuring the payment of the relevant taxes.

Guarantees: The contractor should have the technical and financial capacities necessary for hydrocarbons research and exploitation activities. He should also deposit a bank warranty “payable in Algeria on simple request from ALNAFT, covering the minimum works to be carried out by the contractor during each research phase”. This warranty will be released proportionally on the completion of the different phases.

The State assumes no obligation of financing or guarantee.

Hydrocarbon exploration authorisation: procedure and condition of grant

In 2007, an Executive Decree established the procedure of obtaining hydrocarbon exploration authorisation, amended in 2013 by Executive Decree n°13-354 of October 26th 2013. The Decrees provide the following:

- Exploration authorisation only gives to its owner the right to explore the authorised area, and does not give him in any way a right to enter into an exploitation contract. However, it gives to its owner a right of priority when the explored area is put up for auction, subject to the condition that he agrees with the set price for the concerned area.
- Exploration authorisation is delivered by ALNAFT after the approval of the Minister in Charge of Hydrocarbons for a maximum period of two years, renewable once for a maximum of a further two years. It is non-negotiable.
- To obtain exploration authorisation, the enquirer has to present all the technical and financial capabilities needed to complete the exploration.
- The request for exploration authorisation is presented to ALNAFT and has to describe all the proposed works. Plans for the considered perimeters and a reconditioning plan shall be presented upon request.
- If ALNAFT’s requirements are not fulfilled, after having allowed 30 days for the fulfilment of the requirements, it can remove its authorisation after the Hydrocarbon Minister’s approval.

Qualification criteria and rules to enter into an exploration/production contract procedure: Algerian law defines rules for exploration/production procedures. Executive Decree N°07-184 of June 9th 2007, completed and modified by Executive Decree N°13-425 of December 18th 2013, provides for the procedure to enter into a hydrocarbon exploration/production contract after a quotation request has been submitted.

The qualification criteria include the following:

- As a pre-requisite for the request of quotation, the subsidiary must provide ALNAFT with a guarantee that states that the subsidiary has the backing and expertise of a parent company which commits to provide to the subsidiary all technical, human, financial and any other expertise in order to support the subsidiary so it is able to correctly and timely fulfil its contractual obligations.
- Supplementary qualification to the request for quotation may be carried out by ALNAFT when a project needs technical skills that are not usually within the capabilities of oil companies.
- Any person wishing to participate in a request for quotation shall present a qualification certificate provided by ALNAFT.
- This certificate shall clearly indicate the qualifications that the person can offer, either as an onshore operator (as an investor), or as an onshore/offshore operator (as a non-investor).

- A qualified operator non-investor can only participate in the offer if they are a member of a consortium which is headed by a person qualified as an operator-investor.
- Special qualification is required for offshore perimeters.
- ALNAFT processes candidate requests within 30 days of their receipt. Complementary information may be requested, including candidate interviews.
- If the request is completed, the candidate will be informed within 45 days of the decision by ALNAFT; if the request is incomplete and additional information is needed, the candidate will be notified of the outcome within a further 30 days of ALNAFT's receipt of such additional information.
- A qualified certificate that has been valid for three years can be renewed for a further two years. If the certificate is not renewed, a new qualification request can be made.
- Any qualified person shall annually update the information given in the original request, and must immediately report to ALNAFT modifications of any kind that may affect the control or management of the company or its technical or financial abilities.
- If such modification occurs, ALNAFT must be informed within 15 days. ALNAFT will notify the person concerned whether its certificate is still valid after having examined the modification that occurred in the company. If it is declared invalid, a new qualification request can be made.
- ALNAFT can invalidate the qualification certificate if, under any circumstances, there is an event that unfavourably alters the person's technical and/or financial abilities. ALNAFT informs the person of the certificate's invalidation in writing. Within a period of 10 days, the person may provide proof to oppose the invalidation of the certificate. After having examined the proof ALNAFT will notify the person of its final decision.
- ALNAFT keeps a list of all qualified persons who can be consulted by anyone who has obtained an ALNAFT agreement.

Shale gas:

The 13-01 Law of February 20th 2013 modifies and completes the 05-07 Law on several points and introduced a significant article authorising the exploitation of shale gas.

In article 23 *bis* of 13-01 Law, the Algerian Government recognised the potential of exploiting shale gas after the Council of Ministers' approval. In May 2014, the Algerian Government started to discuss plans for implementing this exploitation.

Algerian newspapers such as “*El Watan*” (July 20th 2014) and “*Le soir*” (July 22th 2014) confirmed Government wishes to exploit shale gas by 2020.

The rules of such exploitation have not been established yet and will certainly be discussed in the coming months.

State participation:

The contractor is not bound to an association or prior association with Sonatrach S.p.A., but the research and exploration contract has to incorporate a clause that allows Sonatrach to participate. The extent of participation of Sonatrach has to be at least 51%.

The contract of research and exploration is made for 32 years. This term is increased by five additional years if gas fields are part of the exploration.

Sonatrach S.p.A. cannot transfer and/or yield its acquired share of the company before the expiry of a period of five (5) years.

The Agreement concluded between Sonatrach S.p.A. and the contractor will contain a joint provision of marketing gas abroad, subject to meeting the following requirements:

reimbursement of research costs; payment of future costs; and definition of both parties' rights and liabilities.

Sonatrach S.p.A. is bound to take charge of, in proportion to its involvement, the investments related to the development programme.

This Agreement, entitled "Operations Agreement", is submitted to ALNAFT and approved by Decree at the Ministers' Council Session.

The transport by pipe activity may be exercised by Sonatrach or by any Algerian company which is a partner of Sonatrach, and has at least 51% of the capital shares.

Disputes settlement:

The new Article 58, as issued from the 2013 Law, provides that any dispute arising from the interpretation or execution of the contract shall be settled in an amicable way, as provided by the contract.

If no agreement can be reached, the dispute will be submitted to international arbitration, as provided by the contract.

In a case where the dispute is between the national company Sonatrach and the other "Contracting Party", the dispute shall still be settled by international arbitration.

The applicable law is the Algerian law, including the 2013 Law of Hydrocarbons.

It has to be noted that almost all arbitration cases are submitted by contract to ICC rules.

Determination of gas and oil prices

Selling price of hydrocarbon products:

The selling price is duty-free. It should include the crude oil price before refining fees, road and pipeline transportation fees, storage and distribution fees, and reasonable net profit from each activity.

Crude oil price before refining:

This is based on the average price for crude oil exports prevalent for the last ten (10) calendar years, based on statistics recorded and published by the Minister in Charge of Hydrocarbons.

Gas selling price on the domestic market:

This should include:

- production costs;
- the cost of the infrastructure necessary and specific to meeting domestic market needs;
 - exploitation costs of infrastructure used to meet the domestic market needs; and
- a reasonable profit margin for each activity.

Gas selling price on the international market:

This is periodically determined by ALNAFT and approved by a Decree by the Minister in Charge of Hydrocarbons.

The reference price is calculated as the highest price which is deduced from the price of each enforced contract and the reference price of the preceding period. This price should not be lower than the ratio of the average Sahara Blend FOB price of the previous trimester.

The average FOB price is the price published by the authorised specialist magazine. It is fixed and readjusted by the Minister in Charge of Hydrocarbons according to the state of the gas market.

Property transfer at the contract or concession expiry:

Property transfer for the State's benefit is exempt from any charges. It will take place at the expiry date of the research and/or exploitation contractual period in the same way as that of the pipeline transportation concession.

Three (3) years before the contract delay expiry, the State should opt either for the transfer or repair of the site. Works and facilities to be transferred should be in a good operational state.

During a contract or the concession delay, the contractor will constitute a paid yearly in *séquestre*, and account for costs resulting from abandonment and/or repairing of the site.

The amount of the deposit is fixed by ALNAFT's appointed expert(s) with regard to the research exploitation contract, and also by the Regulation Agency for the concession.

With regard to the contract of research and exploitation, the control of site abandonment and repairs are both the joint liability of ALNAFT and the Ministry in Charge of Environment. As to the concession, it is the joint liability of the Regulation Agency and the Ministry in Charge of Environment.

The financial system:

A major reform of the petrol financial system was introduced by the Law 05-07. The financial provisions of this law are not applicable to contracts and additional clauses concluded before its publication. The new financial system is characterised by:

- a non-deductible Super profits Tax payable to the Treasury;

- a royalty paid monthly to ALNAFT;
- an Income Tax on Hydrocarbons (or TRP) payable monthly to the Treasury;
- an Additional Tax (or ICR) payable yearly to the Treasury; and
- a Land Tax on real estate other than those related to exploitation.

Each person dealing with the contract is subject to the ICR at 30%.

The activity of research/exploration is exempted from TVA and the professional tax (TAP).

Tax:

- 1% for transfer of rights.
- Gas flaring: 8,000 DA/NM³.
- Water Assisted Recovery: 80 DA/M³.
- Tax on use, transfer or release of greenhouse exhaustion credit (tax to be defined by a regulatory text).

Windfall profits taxes:

In 2006, with the amendments to the hydrocarbons laws that reversed market liberalisation and required the national oil company, Sonatrach, to be a majority partner in all oil and gas projects, a windfall profits tax on oil production was introduced, effective when international oil prices rise above \$30 per barrel.

Environment protection:

The Law 05-07 of 28th April 2005 related to hydrocarbons provides in Article 18 that any entity or operator should prepare and submit to the Hydrocarbons Regulating Authority an environmental impact survey, and an environment management programme which must contain the description of measures for managing prevention of oil spills and environmental risks associated with research and/or exploitation activities.

The Hydrocarbons Regulating Authority is entitled to coordinate such surveys jointly with the Ministry in Charge of Environment and provide the corresponding visa to the relevant contractor and operator.

The environmental impact survey should, at the minimum, contain the following elements:

- a statement on the activity to be carried out;
- a description of the site's initial state including the surrounding environment which might be affected by the activity to be carried out;
- a description of the potential impact on the environment and human health related to the activity to be carried out, and suggestions about alternative solutions;
- a statement of facts on the cultural patrimony of the activity to be carried out and its repercussions on socio-economic conditions; and
- a statement on measures allowing the reduction, removal and if possible, compensation for the harmful effects on the environment and health.

Besides these requirements, gas flaring is prohibited, except where previously authorised by ALNAFT, and when a tax of eight thousand (8,000) DA/NM³ (Article 52) has been paid. The repair and adaptation of installations to meet the new standards should be implemented within a period of seven (7) years.

Article 18 of the 13-01 Law of February 20th 2013 requires that any person practising any of the activities under this Law shall prepare and submit a full environment impact assessment and environment management plan to the Hydrocarbon Regulation Authority for approval,

The Hydrocarbon Regulation Authority is charged with following and coordinating these assessments with the Ministry of Energy. After a period of one month after the studies have been carried out, the corresponding visas may be granted.

Danger assessments shall be carried out for all the activities defined under the 13-01 Law of February 20th 2013. Such assessments shall describe all risks that may be caused by these activities and how they can be prevented. Such assessments are then submitted to the “*Autorité de Régulation des Hydrocarbures*” for approval, and must be renewed every five years.

The renewable energies sector

As well as hydrocarbon and gas energy, Algeria is looking to develop other natural resources through renewable energy sources such as solar panels and wind turbine power plants.

Algeria has adopted legislation on renewable energies.

Algerian Law 04-09 of August 14th, 2004 promoting renewable energies, aims to promote renewable energies in order to protect the environment by favouring the use of clean energies to combat global warming, and to participate in sustainable development through the preservation and conservation of fossil fuels.

Algerian Law defines renewable energies as: electrical; mechanical; thermal; and gaseous energy forms obtained from the transformation of solar radiation, wind energy, organic wastes, hydraulic energy, and the use of biomass.

The development of renewable energies are subject to certification. The objective is to prove that the relevant energy has a renewable source.

The Algerian government has established a number of commissions dealing with the development of renewable energies and the protection of the environment.

(i) CREG “*Commission de Régulation de l'Electricité et du Gaz*”

This Commission was created by the Law 02-01 of February 5th, 2002. It is an independent entity that has the force of law.

Role and mission: CREG has the purpose of regulating the electricity and gas market to ensure it is competitive and transparent.

It is the competent authority to deliver authorisations for the exploitation of new installations, to issue calls for tender, and to allocate electricity concessions.

(ii) “*Institut Algérien des énergies renouvelables*”

The Institute is an independent legal entity and is placed under the guardianship of the Energy Minister. Its purpose is to:

- Take charge of the needs of institutions, companies and public and private entities in matters of training, specialisation, improvement and recycling in the field of renewable energies.
- Conclude national and international agreements in the field of renewable energies and energy efficiency.
- Provide for the training of new and existing engineering students.