

Lex Petrolea

The International Energy Arbitration Newsletter

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Welcome to Lex Petrolea

With this first issue of Lex Petrolea: The King & Spalding International Energy Arbitration Newsletter, we begin publication at least two times a year of a newsletter devoted to legal developments arising out of arbitration of energy disputes of all types.

As many of our readers will immediately recognize, the name chosen for this newsletter, Lex Petrolea, recalls Doak Bishop's seminal 1998 article "International Arbitration of Petroleum Disputes: The Development of a *Lex Petrolea*."¹ He did not invent the term; as he pointed out, it was used by the State party in the famous AMINOIL case to refer to a set of ostensible legal precedents stemming from a series of nationalizations of oil concessions in the 1970s. At the conclusion of his in-depth examination of the previous 25 years of arbitral awards impacting the international petroleum industry, he observed that the progress in the legal reasoning reflected in those awards had "not yet created a mature set of legal regulations, but it ha[d] developed the beginnings of a *lex petrolea* that serves to instruct, and in a certain sense even regulate – within broadly-defined boundaries – the international petroleum industry. As international arbitration continues to grow (provided that the publication of awards also continues), this *lex petrolea* may yet mature into a fully-developed subset of international law."²

Coincidentally with publication of this first issue of our Lex Petrolea newsletter, The Journal of World Energy Law & Business has just published an article by Tom Childs, a Senior Associate in King & Spalding's London Office, titled "Update on *Lex Petrolea*: The continuing development of customary law relating to international oil and gas exploration and development."³ In his article, Mr. Childs describes published arbitral awards affecting the petroleum industry from 1998 to the present. At the conclusion of his article, Mr. Childs suggests that these more recent awards "address a sufficiently wide range of issues to create a '*lex petrolea*' or customary law comprising legal rules adapted to the industry's nature and specificities."

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Welcome

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Like these articles, our Lex Petrolea newsletter will explore the ever-growing number of international energy arbitrations, many constituting high-stakes cases involving claims in the billions of dollars, and each presenting unique and intriguing elements as well as often reflecting developments of broader significance for the global energy industry. Unlike these articles, our newsletter will not be limited to exploration and production of hydrocarbons, but as time goes on will cover all parts of the larger energy industry, including not only Host Government contracts, E&P joint ventures, and oil field services, but also oil trading, pipelines, refining, LNG projects and sales, long-term gas contracts, electric power, nuclear, and renewables.

This first issue starts by welcoming three well-known energy advocates to King & Spalding's international arbitration practice: Guillermo Aguilar-Alvarez, John Savage, and Tom Sprange. King & Spalding is privileged and proud to count these fine lawyers among its partners, who by any standard may be described, as stated in the article's headline, as "Major Energy Arbitration Talent."

In "Breaking New Ground," Lex Petrolea spotlights the rising use and potentially critical importance of interim measures in support of international oil companies engaged in treaty and commercial arbitrations with Host Governments. While these actions can take many forms, a claim for interim measures in an international arbitration can hardly prove more important than when used to prevent or stop a Host Government from using its criminal justice system to intimidate and abuse the rights of foreign investors.

In "A Brief Overview of Venezuela's Oil Policies," Lex Petrolea takes a moment to review how the situation for foreign investors got to where it is today in Venezuela and asks "what's next?" The overall trend seems to point inexorably downward, especially with the State's recent imposition of a massive windfall profits tax and with claims submitted to arbitration continuing to pile up.

In "Corporate Counsel Speak Out," a regular feature of Lex Petrolea, the lead arbitration lawyers at ConocoPhillips speak out on "Protecting Your Foreign Investments on the Front End." They stress the importance of planning for future disputes by according the drafting of arbitration clauses the early attention it deserves and by structuring the investment to provide for treaty protection. We cannot thank our friends and colleagues at ConocoPhillips enough for sharing their advice and insights with our readers.

This issue of Lex Petrolea also contains an article concerning one of the few arbitral awards dealing with the domestic market obligation ("DMO"). In the March 2010 award in *Chevron v. Republic of Ecuador*, the tribunal described the essential DMO issue as whether "the crude oil requested by Ecuador from TexPet [was] to be priced according to the crude oil inputs to the refineries or according to the ultimate destination of the derivatives products from the refineries." Under a 1973 Concession Agreement, TexPet had supplied oil for domestic consumption, but Ecuador had exported a portion of the derivative products without paying TexPet the international market price.

In the final article of this inaugural issue, Lex Petrolea provides, if not an exhaustive list, certainly an expansive list, with helpful details, of "Resources on Resources: Publications, Research and Databases Available to Help the Advocate in International Oil & Gas Disputes." We doubt that there exists a better, more helpful article on this subject, especially for the young lawyer working on his or her first oil and gas case.

With this first issue, Lex Petrolea takes its own place as a resource for the natural resource lawyer, along with the King & Spalding monthly Energy Newsletter, the King & Spalding Quantum Quarterly: The Damages Newsletter of King & Spalding's International Arbitration practice group, and the King & Spalding Energy Forum, the quarterly series of Houston-based programs offered by the Energy Working Group of King & Spalding. We invite your comments on this first and all subsequent issues of Lex Petrolea: The King & Spalding International Energy Arbitration Newsletter. ♦

John Bowman

¹ R. Doak Bishop, "International Arbitration of Petroleum Disputes: The Development of a *Lex Petrolea*," XXIII YEARBOOK COMM. ARB'N 1131 (1998).

² *Id.* at 1207-08.

³ J. World Energy L. & Bus. 214 (2011).

Major Energy Arbitration Talent Joins King & Spalding's International Arbitration Practice

Over the past year, three prominent international arbitration partners with extensive energy expertise and experience, Guillermo Aguilar-Alvarez (New York), John Savage (Singapore), and Tom Sprange (London), have joined the already deep bench of King & Spalding international energy arbitration lawyers. With their arrival, King & Spalding can field a team of lawyers who act as advocates and arbitrators in all types of commercial and investment disputes affecting the global energy industry, whether the disputes concern actions by Host Governments, joint venture problems, oil field services, pipeline and facility construction and operations, LNG projects and sales, natural gas pricing, power projects, or asset sales.



Guillermo Aguilar-Alvarez joined King & Spalding in December 2010. His energy arbitration experience covers all types of disputes, with several construction arbitrations concerning pipeline, refinery, power generation, and power line projects throughout Latin America. He brings to his international arbitration practice his prior work as Principal Legal Counsel for Mexico for the negotiation of NAFTA and FTAs with Costa Rica, Bolivia, Colombia, and Venezuela and as General Counsel of the ICC International Court of Arbitration. Most recently, he was appointed Vice President of the International Council for Commercial Arbitration (ICCA). About his new colleagues at King & Spalding, Mr. Aguilar-Alvarez notes that he has been “particularly impressed by the generosity with which members of our group work across offices.” A Mexican national, he is fluent in English, Spanish, and French, with a working knowledge of Italian and Portuguese.



John Savage joined King & Spalding in August 2010 to lead the firm's Arbitration Practice in Asia. Among his current energy matters, he represents one of the world's largest multinationals in an HKIAC arbitration against a Chinese joint venture party in the renewable energy sector, an oil major in two SIAC arbitrations in Singapore against an independent gas producer concerning coalbed methane assets in East

Asia, and an independent oil company in an UNCITRAL arbitration against an NOC concerning a farm-in agreement in respect of offshore blocks in South East Asia. Mr. Savage currently sits on the Board of Directors of Singapore International Arbitration Centre (SIAC). According to Mr. Savage, “It's easy to enjoy what we do for a living here: we try large, challenging, international cases for great clients, working with partners and colleagues who are smart, good people.” He is admitted to the bar in England & Wales (Solicitor) and France (Avocat), and is fluent in English and French.



Most recently, Tom Sprange joined the firm in April 2011 as partner in our London office. An Australian, he is admitted to practice as a Solicitor in England and Wales and he is also a member of the Law Society of New South Wales in Australia. With broad commercial arbitration experience across several business sectors, including energy and natural resources, he is presently involved in a number of arbitrations with a Russian focus. His substantial energy arbitration experience includes acting for claimants in an ICC arbitration regarding a Kurdistan based oil & gas joint venture, acting for respondents in an SCC arbitration regarding a Siberian oil concession, acting for a major oil industry service company in a dispute with an NOC, and acting for a major oil company in pre-award freezing order and attachment proceedings. He is recognized as a specialist in obtaining Worldwide Freezing Orders in the English courts, with extensive experience also in injunctive and enforcement actions. Mr. Sprange engages in FCPA work for a number of clients based in the U.S, including a leading oil services company with respect to its activities throughout the Middle East, Africa, and South East Asia, and has acted for the Energy minister of an African State in relation to allegations of bribery and corruption brought by Commonwealth authorities.

Commenting on his first few months at King & Spalding, Mr. Sprange says that he is “surrounded by superb colleagues with great clients, a wealth of experience and expertise, and some very interesting cases.” ♦

Breaking New Ground: Interim Measures in International Arbitrations Involving Petroleum Investments

Introduction

The sharp rise in international arbitrations filed by energy companies in recent years has yielded an increasing number of interim measures applications. While interim measures have been legally available for decades, the various forms of interim relief issued by tribunals in more recent years suggest that claimants in energy-related arbitrations should strongly consider whether their needs would be met by a well-developed interim measures request. The benefits of interim relief, particularly in the context of international investment disputes, are significant. Interim measures generally provide an expedited procedure to challenge the most egregious conduct by host States (or that which threatens the greatest harm), all in the context of protecting the parties' legal rights during the pendency of the arbitration.

This article briefly addresses the legal grounds for an international tribunal's authority to grant interim measures, before examining significant examples of interim measures decisions involving energy companies in recent years. These examples show that the types of requests made — with mixed results — tend to fall into three main categories: (1) security for costs, (2) preservation of the status quo and non-aggravation of the dispute, and (3) suspension of parallel proceedings.

Authority for Interim Measures by International Tribunals

Speaking in broad terms, the following three requirements generally govern the issuance of interim relief: (1) the tribunal's *prima facie* jurisdiction over the subject matter of the request; (2) a threat of substantial harm or prejudice to a right capable of being protected by the tribunal; and (3) urgency in the sense that the risk of harm or prejudice is imminent.¹

The legal grounds for interim measures are based on the rules of the major arbitral institutions, in combination with the tribunal's authority under the particular treaty or agreement governing the arbitration. For example, Article 47 of the ICSID Convention states that “the

Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party,” with Rule 39 of the ICSID Arbitration Rules further specifying that the tribunal may recommend provisional measures “on its own initiative or recommend measures other than those specified in a request.” The UNCITRAL Arbitration Rules also confer broad authority on the tribunal to issue interim measures. While the 1976 version of the UNCITRAL Rules authorized an arbitral tribunal to issue “any interim measures it deems necessary in respect of the subject-matter of the dispute” (Article 26(1)), the revised Rules, issued in 2010, provide even greater detail regarding the tribunal's authority, and explicitly allow interim measures to: (i) maintain or restore the status quo; (ii) prevent imminent harm or prejudice to the arbitral process; (iii) preserve assets; and (iv) preserve evidence.

Similarly, under Article 23 of the ICC Rules, the tribunal may order “any interim or conservatory measure it deems appropriate,” which may further be conditioned on giving of security, and which may take the form of an order or award. The SIAC Rules (Article 26) and the ICDR Rules (Article 37) take this authority a step further, allowing a party to apply for interim relief even before the constitution of the tribunal, through a fast-track procedure employing an emergency arbitrator.

Key Interim Measures Requests in Oil-Related Cases

Security for costs

Some arbitral tribunals have considered interim measures requests for security for costs. In *RSM v. Grenada*, the claimants asserted that Grenada breached

“The benefits of interim relief, particularly in the context of international investment disputes, are significant.”

¹ This three-prong test is supported by the jurisprudence of the International Court of Justice, as well as by awards issued under the ICSID Convention and the UNCITRAL Arbitration Rules. See, e.g., *LaGrand Case (Germany v. United States of America)*, ICJ, Request for the Indication of Provisional Measures, Order, Mar. 3, 1999, ICJ Reports 1999; *Case Concerning the Application of the International Convention on the Elimination of all Forms of Racial Discrimination*

(*Georgia v. Russia*), Order, Oct. 15, 2008; *City Oriente Ltd. v. Republic of Ecuador and Petroecuador*, ICSID Case No. ARB/06/21, Decision on Provisional Measures, Nov. 19, 2007; *Biwater Gauff (Tanzania) v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3, Sept. 29, 2006; *Sergei Paushok et al. v. Government of Mongolia*, UNCITRAL, Order on Interim Measures, Sept. 2, 2008.

its Treaty obligations in relation to a 1996 petroleum exploration agreement, which provided for RSM to apply for, and Grenada to grant, a petroleum exploration license within 90 days of the Agreement’s effective date.² In 2004, RSM submitted an application for an exploration license, which Grenada denied as untimely and thereafter terminated the Agreement. A first ICSID arbitration was conducted, and the tribunal rejected the claimants’ contention that Grenada had breached the Agreement. RSM applied for annulment of the prior award, and although the annulment application was fully briefed, RSM refused to pay the advance on costs requested by ICSID, which resulted in those proceedings being suspended.

In parallel, the RSM claimants commenced another ICSID arbitration, which prompted Grenada to file — as soon as the tribunal was constituted — a request for security for costs to protect its rights during the first phase of the proceedings. Grenada asserted that the issue was not whether the claimants could satisfy a possible costs award, but whether they were willing to do so.³ Although the claimants had “ample means” to post the security requested,⁴ Grenada argued that the claimants were unwilling to do so, relying principally on RSM’s decision not to post the advance on costs required in the annulment proceedings and on the attempts of RSM’s CEO to place personal assets beyond the reach of his creditors about 10 years ago.⁵

After concluding that Article 47 of the ICSID Convention and Rule 39 of the ICSID Arbitration Rules empowered an ICSID tribunal, in an appropriate case, to grant interim measures in the nature of security for costs,⁶ the tribunal rejected Grenada’s request for security for costs on the basis that Grenada had failed to prove the claimants’ inability or unwillingness to pay a costs award.⁷ According to the tribunal, Grenada did not contest the claimants’ ability to pay, nor did it demonstrate RSM’s unwillingness to pay. RSM had every right not to continue with its annulment application, and the conduct of RSM’s CEO more than a decade earlier in unrelated proceedings could not support the conclusion that the claimants would use every available means to avoid the enforcement of any potential costs award.⁸

Status quo/non-aggravation of the dispute

Most recently, the arbitral tribunal in *Chevron v. Ecuador* has issued a number of interim measures orders in response to the claimants’ requests. Chevron’s



claims in the arbitration relate to Ecuador’s failure to respect its obligations under the U.S-Ecuador BIT, international law, and investment agreements through improper conduct related to an environmental litigation in the Ecuadorian court of Lago Agrio (“Lago Agrio Litigation”). In the litigation, which remains ongoing in Ecuador, a number of nominal plaintiffs represented by U.S. and Ecuadorian counsel have sought over US\$ 113 billion in damages from Chevron for the alleged environmental impact resulting from the activities of a Consortium comprised of Chevron’s subsidiary, TexPet, and Ecuador’s State-owned oil company, Petroecuador, that ended in 1992.

Chevron and TexPet filed their arbitration against Ecuador under the UNCITRAL Rules in September 2009. The tribunal issued its first interim measures order in May 2010, ordering the parties “to maintain . . . the status quo and not to exacerbate the procedural and substantive disputes before this Tribunal,” including refraining from “any conduct likely to impair or otherwise adversely affect, directly or indirectly, the ability of the Tribunal to address fairly any issue raised by the Parties before this Tribunal.”⁹ With respect to the Lago Agrio Litigation in particular, the tribunal ordered the parties not to exert any unlawful influence or pressure on the Lago Agrio court and to inform the tribunal of the likely date of issuance of the Lago Agrio judgment as soon as such date was known.

In *Occidental v. Ecuador*, the claimants commenced ICSID arbitration proceedings following Ecuador’s decision to terminate a participation contract granting the claimants the exclusive right to carry out exploration and exploitation activities in “Block 15”

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² *RSM Production Corp. et al. v. Grenada*, ICSID Case No. ARB/10/6, Decision on Respondent’s Application for Security for Costs, Oct. 14, 2010 (“*RSM v. Grenada*”).

³ *Id.* ¶ 3.3.

⁴ *Id.* ¶ 5.22.

⁵ *Id.* ¶ 5.23.

⁶ *Id.* ¶ 5.16.

⁷ *Id.* ¶ 5.21.

⁸ *Id.* ¶ 5.24.

⁹ *Chevron Corp. and Texaco Petroleum Co. v. the Republic of Ecuador*, UNCITRAL, Order on Interim Measures, May 14, 2010 (“*Chevron v. Ecuador*”).

¹⁰ *Occidental Petroleum Corp. and Occidental Exploration and Production Co. v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Decision on Provisional Measures, Aug. 17, 2007 (“*Occidental v. Ecuador*”).

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of the Ecuadorian Amazon.¹⁰ In its interim measures application, the claimants requested: (i) that they be notified in advance of any governmental decision to award their block to a third party and (ii) that Ecuador take the necessary steps to ensure that oil produced from the expropriated Block 15 and shipped through the OCP pipeline would be credited towards the claimants' "ship-or-pay" obligations, failing which the claimants risked incurring "an ever-increasing form of damage."¹¹ The claimants argued that such measures were necessary to maintain the status quo ante and to preserve from further degradation their rights to resume Block 15 operations and to obtain specific performance of the participation contract.¹² The tribunal rejected the claimants' request for interim measures, concluding: (i) the claimants had not established a strongly arguable case that there exists a right to specific performance where a natural resources concession agreement has been terminated by a sovereign State,¹³ and (ii) the harm for the claimants in the absence of interim measures was only "more damages" — as admitted by the claimants — which also could be compensated by monetary compensation.¹⁴

The *EnCana v. Ecuador* tribunal similarly considered a request for interim measures intended to maintain

“[i]nterim measures ordering the suspension of parallel proceedings or otherwise affecting such proceedings seem to be growing in numbers. This rise may be a reflection of the increasingly difficult and outrageous circumstances facing some claimants at the mercy of host States.”



the status quo and preserve the claimant's rights.¹⁵ The claimant, through its subsidiaries, was a party to a series of oil contracts with the Ecuadorian national oil company, Petroecuador, which entitled the subsidiaries to a share of oil produced from each field covered by the contracts. Subsequently, the Ecuadorian tax service changed the way in which it allowed VAT rebates for goods and services used in connection with the production of oil for export, effectively denying VAT rebates on future acquisitions, while also pursuing certain enforcement measures to reclaim VAT refunds wrongly paid in its view. Specifically, Ecuador froze the bank accounts of the claimant's subsidiary and its legal representative in Ecuador, in an effort to recover approximately \$7.5 million claimed to be owed to Ecuador as a result of incorrect VAT refunds.¹⁶ These actions formed the subject of *EnCana's* interim measures application. The tribunal found that Ecuador's enforcement measures were open to challenge before the Ecuadorian tax courts and that, in any event, if jurisdiction were upheld ultimately, it would be open to the tribunal to provide redress to the claimant for any losses suffered by the enforcement measures taken in breach of the treaty, including by payment of interest on sums refunded.¹⁷ Accordingly, the tribunal concluded that it was not necessary to order the withdrawal of the enforcement measures against *EnCana's* subsidiary to protect the claimant's rights at stake in the arbitration from irreparable harm.¹⁸

Suspension of parallel proceedings

Numerous international tribunals have issued provisional measures directed at the conduct of domestic courts. In his treatise on international arbitration, Gary Born likens provisional measures directed at pending litigation to court-ordered "antisuit" injunctions, in which a court mitigates the risk of parallel and inconsistent proceedings by issuing an injunction in protection of its own jurisdiction.¹⁹

¹¹ Id. ¶¶ 26, 32.

¹² Id. ¶¶ 20, 33.

¹³ Id. ¶ 86.

¹⁴ Id. ¶ 99.

¹⁵ *EnCana Corp. v. Republic of Ecuador* (UNCITRAL), Interim Award, Request for Interim Measures of Protection, Jan. 31, 2004 (*EnCana v. Ecuador*).

¹⁶ Id. ¶ 2.

¹⁷ Id. ¶ 17.

¹⁸ Id. ¶¶ 17-19.

¹⁹ Gary B. Born, *INTERNATIONAL COMMERCIAL ARBITRATION: COMMENTARY AND MATERIALS* p. 2009 (Kluwer 2009).

Of the arbitral institutions that hear investor-State disputes, ICSID possesses the most highly-developed rules and case history regarding a tribunal’s authority to restrict litigation relating to the issues brought before the tribunal. This is largely due to Article 26 of the ICSID Convention, which provides that parties who consent to ICSID arbitration do so to the exclusion of any other remedy. On numerous occasions, parties have called upon ICSID tribunals to issue provisional relief to dismiss or circumscribe domestic court proceedings in violation of Article 26.²⁰

While the exclusive-remedy rule in Article 26 forms the basis of most anti-suit orders issued by ICSID tribunals, it is not the only available ground. In *Burlington v. Ecuador*, for instance, an ICSID tribunal ordered the suspension of local proceedings not on the grounds of Article 26, but rather on the basis of preserving the status quo and not aggravating the dispute.²¹ In that case, Ecuador and Petroecuador had initiated seizures and judicial proceedings against the claimant’s oil production in an effort to collect an “additional participation” required by Law No. 2006-42 (“Law 42”). This Law mandated that all oil companies operating in Ecuador under “participation contracts” (production-sharing contracts) pay at least 50% of revenues obtained over a certain base-price of oil. In October 2007, that percentage was set by Executive Decree at 99% of revenues. In defending the enforcement measures that it had undertaken against Burlington, Ecuador asserted that it had a duty to enforce its own laws regardless of the pending ICSID proceeding.²² The tribunal rejected this argument, noting that by ratifying the ICSID Convention, Ecuador had accepted the power of an ICSID tribunal to enforce provisional measures, “even in a situation which may entail some interference with sovereign powers and enforcement duties.”²³ The tribunal ordered that Ecuador and Petroecuador (the respondents in the ICSID arbitration) “shall discontinue the proceedings pending against the Claimant [...] and shall not initiate new [...] actions.”²⁴

Similarly, the *Perenco v. Ecuador* tribunal protected the claimant’s contractual rights at the heart of the dispute by enjoining Ecuador from (among other things) instituting or pursuing any judicial proceedings against Perenco or its employees to collect the disputed amounts required by Law 42 but not by the contract.²⁵ The tribunal considered that, pending the arbitration challenging this “additional participation,” Perenco should not have to choose between making the disputed

“In ordering Ecuador to halt the criminal proceedings, the tribunal held that Ecuador’s sovereign right to prosecute and punish crimes “should not be used as a means to coercively secure payment of the amounts allegedly owed by City Oriente . . .”

payments and suffering coercive actions by Ecuador (such as seizure of its oil production or other assets) to collect those disputed payments.²⁶

Arising from the same background of Ecuadorian Law 42, *City Oriente v. Ecuador* is an important example of an ICSID tribunal granting interim measures in the context of a criminal case. There, the tribunal ordered Ecuador to stop pursuing indictments pending against the claimant’s individual executives.²⁷ Ecuador had filed criminal complaints against three executives of City Oriente Limited, alleging, *inter alia*, that they had committed embezzlement by not paying the “additional participation” required by Law 42. The tribunal granted the claimant provisional relief, ordering Ecuador to refrain from “instituting or prosecuting, if already in place, any judicial proceeding or action of any nature whatsoever against or involving [the claimant] and/or its officers or employees arising from or in connection with” the contract at issue.²⁸ In ordering Ecuador to halt the criminal proceedings, the tribunal held that Ecuador’s sovereign right to prosecute and punish crimes “should not be used as a means to coercively secure payment of the amounts allegedly owed by City Oriente . . . since this would entail a violation of the principle that neither party may aggravate or extend the dispute or take justice into their own hands.”²⁹

Early this year, the *Chevron v. Ecuador* tribunal issued a significant order affecting the enforceability of a future judgment by an Ecuadorian court in the Lago Agrio Litigation. Chevron filed a second application for revised interim measures on January 14, 2011,

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²⁰ While these cases do not involve energy companies, the same principles apply. See *MINE v. Guinea*, ICSID Case No. ARB/84/4, Award, Jan. 6, 1988, 4 ICSID Rep. 67 (1997); *Tokios Tokeles v. Ukraine*, ICSID Case No. ARB/02/18, Procedural Order No. 1 ¶ 1, July 1, 2003; *Autopista v. Venezuela*, ICSID Case No. ARB/00/5, Award ¶ 205, Sept. 23, 2003; *Zhimvalli v. Georgia*, ICSID Case No. ARB/00/1, Award ¶¶ 44-45, Jan. 24, 2003, 10 ICSID Rep. 6; *CSOB*

v. Slovak Republic, ICSID Case No. ARB/97/4, Procedural Order No. 4, Jan. 11, 2000; *CSOB v. Slovak Republic*, ICSID Case No. ARB/97/4, Procedural Order No. 5, Mar. 1, 2000.

²¹ *Burlington Resources v. Ecuador*, ICSID Case No. ARB/08/5, Procedural Order No. 1 ¶ 68, June 29, 2009 (“*Burlington v. Ecuador*”).

²² *Id.* ¶¶ 64-66.

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asking the tribunal, *inter alia*, to order Ecuador to use all means necessary to stay or suspend any attempted enforcement of the future judgment. Within two weeks, the tribunal called an emergency hearing on the matter, which resulted in an unprecedented interim measures order targeting the enforcement of any future Lago Agrio judgment worldwide, and directing Ecuador to “take all measures at its disposal to suspend or cause to be suspended the enforcement or recognition within and without Ecuador of any judgment against the First Claimant [Chevron] in the Lago Agrio Case.”³⁰ The tribunal granted a number of Chevron’s other requests for relief, including an order that Ecuador refrain from aggravating the dispute and a declaratory order that any first-instance judgment in Ecuador is not enforceable, in accordance with the dictates of Ecuadorian law.

While these examples are encouraging for investor-claimants, not all energy companies have been successful in obtaining interim measures ordering the suspension of parallel proceedings. In *Plama v. Bulgaria*, for example, the tribunal refused to suspend local insolvency proceedings where the claims, causes of actions, and parties in the two proceedings were different, and where the local proceedings could not affect the outcome of the ICSID arbitration.³¹

Conclusion

As emerges from the foregoing, requests for interim



measures in oil-related international arbitrations have met with mixed success. Nevertheless, interim measures ordering the suspension of parallel proceedings or otherwise affecting such proceedings seem to be growing in numbers. This rise may be a reflection of the increasingly difficult and outrageous circumstances facing some claimants at the mercy of host States. Although the future of this trend remains uncertain, at a minimum it suggests that claimants in energy-related arbitrations should consider whether their rights at stake in an arbitration could receive important protection as a result of a well-developed interim measures request.

Authors:



Caline Mouawad is Counsel in the New York office, and a graduate of Harvard Law School and Rice University. Over the past ten years, she has handled numerous complex arbitrations in Europe, the CIS, Latin America, and the Middle East, involving both commercial and investment treaty claims and disputes in a number of industry sectors, including oil and gas, energy, and telecommunications. She has published several articles on a variety of international arbitration topics, including the meaning of investment in the ICSID Convention, the new arbitration rules of the Cairo Regional Centre for International Commercial Arbitration, and the power of U.S. courts under the FAA to enjoin arbitrations. Caline Mouawad is a native English and French speaker, and has conversational Arabic.



Elizabeth Silbert is an associate in the Houston office. She has experience in a number of investor-State and commercial arbitrations under the ICSID, UNCITRAL, ICC, AAA, and CPR Rules, involving clients with investments in Latin America, Europe, and the Middle East. Elizabeth Silbert also has experience in complex commercial litigation and arbitration within the US, before both federal courts and major arbitral institutions. Elizabeth Silbert graduated magna cum laude from Georgetown University and earned her law degree from Northwestern University School of Law, where she served as an associate editor on the Law Review. She is a native English speaker and proficient in French.

²³ Id. ¶ 66 (emphasis added).

²⁴ Id. at IV(7).

²⁵ *Perenco Ecuador Ltd. v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Decision on Provisional Measures ¶ 79, May 8, 2009 (“*Perenco v. Ecuador*”).

²⁶ Id. ¶ 60.

²⁷ *City Oriente Limited v. Republic of Ecuador and Petroecuador*, ICSID

Case No. ARB/06/21, Decision on Provisional Measures ¶ 55, Nov. 19, 2007 (“*City Oriente v. Ecuador*”).

²⁸ Id.

²⁹ Id. ¶ 62.

³⁰ *Chevron v. Ecuador*, Order for Interim Measures, Feb. 9, 2011.

³¹ *Plama v. Bulgaria*, ICSID Case No. ARB/03/24, Order on Provisional Measures ¶ 38, Sept. 6, 2005 (“*Plama v. Bulgaria*”).

A Brief Overview of Venezuela's Oil Policies

1922-1999

The 1922 blow out of the Barroso 2 oil well in the State of Zulia marked the beginning of the Venezuelan oil rush. That well alone produced an average of 100,000 barrels per day, so not surprisingly, Venezuela immediately caught the attention of the emerging international oil companies. General Juan Vicente Gómez, who ruled the country as his personal *hacienda* for almost 30 years, awarded oil concessions to either Gomecistas or close family members who later resold them to international oil companies.¹ Gomez's death in 1935 did not entail, however, the end of the concession regime. Although subsequent administrations gradually increased the government's control and take, oil concessions remained valid until 1975, when Venezuela nationalized its oil industry.

In August 1975, the Venezuelan Congress (now National Assembly) approved the Organic Law that Reserves to the State the Industry and Commerce of Hydrocarbons (the "1975 Nationalization Law"). This law terminated the existing concession agreements and established a swift expropriation process. The 1975 Nationalization Law also entrusted *Petróleos de Venezuela, S.A. ("PDVSA")*, the newly-incorporated state-owned company, with the country's oil and gas operations.

The Government staffed PDVSA and its affiliates with the local workforce of the former concessionaires, and the company rapidly gained international recognition. PDVSA, however, lacked the financial strength and the necessary technology to develop Venezuela's vast hydrocarbon resources efficiently, particularly those extra-heavy oil deposits located in the Orinoco Oil Belt.

Amid the 1990s oil price decline, Venezuela adopted a series of policies designed to attract foreign investors to its oil industry. This process, known as *apertura petrolera* or oil opening, resulted in: (i) 32 Operating Services Agreements designed to increase production in marginal fields, (ii) four Association Agreements for the production of extra-heavy crude in the Orinoco Oil Belt; and (iii) eight Shared-Risk-and-Profit Exploration Agreements, all signed with private — mostly foreign — investors.

Depending on the type of project, the incentives offered by the Government included a general corporate tax regime, reduced royalty periods, and access to international arbitration. Left-wing opposition leaders harshly criticized and challenged the *apertura* initiatives. Notwithstanding these obstacles, the process continued and the challenged projects ultimately received the blessing of both the Venezuelan legislature and the Supreme Court of Justice.

1999-2004

Hugo Chávez, a former army Lieutenant Colonel who led a failed *coup d'état* in 1992, became Venezuela's President in February 1999. Chávez ran for office on a leftist platform, yet guaranteed that his administration would encourage and promote foreign investments. Just one day before winning the 1998 presidential election, Mr. Chávez stated that his administration would nationalize "absolutely nothing." But change was in the air, and the *apertura's* principal detractor, Mr. Alí Rodríguez-Araque, became the first oil minister of the Chávez era.

In 2001, President Chávez, who had been empowered by the National Assembly to issue Decree-Laws, enacted a new Organic Law on Hydrocarbons that abolished the existing hydrocarbon regime and established that hydrocarbon activities had to be carried out either directly by the State, through PDVSA, or by mixed companies (*empresas mixtas*) in which the State held a majority participating interest. Although the Organic Law on Hydrocarbons did not contain a provision grandfathering the validity of prior contracts and projects, Venezuelan government officials assured investors that existing projects would remain unaltered. Those assurances were consistent with Venezuelan law principles that forbid the retroactive application of laws.

In December 2002, PDVSA's managers joined a general strike protesting the policies and actions of the Chávez administration, including those affecting the "meritocracy" system by which PDVSA's employees achieved levels of greater responsibility within the company. The strike halted oil and gas operations around the country for

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¹ See Daniel Yergin, *The Prize, the Epic Quest for Oil, Money & Power* 219 (2009).

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over a month, and eventually resulted in the firing of more than 18,000 PDVSA employees. During the strike, the Government took control of an oil terminal operated by Sociedad Williams Enbridge & Compañía (SWEC), a Williams-led consortium, and of PDVSA's IT department, which had been outsourced to a joint venture formed by PDVSA and Science Applications International Corporation (SAIC), a San Diego-based company. The Government accused both SWEC and SAIC of committing acts of sabotage and disrupting oil operations during the strike. An international arbitration tribunal decided, however, that PDVSA had breached its contractual commitments towards SWEC and ordered compensation pursuant to the parties' agreement. SAIC, on the other hand, received political insurance compensation from the Overseas Private Investment Corporation (OPIC).

2004-2007

On October 10, 2004, President Chávez surprised investors by announcing during his weekly television show — *Aló Presidente* — that the royalty reduction agreement that had been approved for extra-heavy oil projects during the *apertura* process would immediately come to an end. From that date on, heavy-oil projects were forced to pay a 16.66% royalty.

In April 2006, the National Assembly approved the Law of Regularization of Private Participation in Primary Activities (the "Regularization Law") terminating the 32 operating agreements executed during the 1990s. The Government maintained that these agreements were illegal, but allowed their participants to "migrate" to a mixed-company regime based on terms and conditions unilaterally imposed by the Government. The Government showed the door to those companies that were not willing to accept the new conditions. Most investors, however, decided to abide by the Government's terms.

In May 2006, the National Assembly approved a partial amendment to the Organic Law on Hydrocarbons establishing a new "extraction tax" that effectively increased the royalty paid by existing projects to 33.33%. Additionally, on August, 29, 2006, the Venezuelan

National Assembly raised the income-tax rate applicable to ongoing oil projects from 34% to 50%.

In February 2007, President Chávez, again empowered by the National Assembly, issued Decree-Law No. 5200 on the Migration to Mixed Companies of the Association Agreements of the Orinoco Oil Belt and the Exploration at Risk and Shared-Risk-and-Profit Exploration Agreements. This Decree-Law ordered the forced transformation of the Petrozuata (ConocoPhillips), Sincor (Total, Statoil), Cerro Negro (ExxonMobil, BP), Hamaca (ConocoPhillips, Chevron), Golfo de Paria Oeste (ConocoPhillips), Golfo de Paria Este (ConocoPhillips, ENI, OPIC Karimum), La Ceiba (ExxonMobil), and Sinovensa (CNPC) association agreements into mixed companies created under the Organic Law on Hydrocarbons in which PDVSA or one of its subsidiaries would hold at least a 60% participating interest. Decree-Law 5200 further established that if an agreement on the migration to the new regime was not reached by June 26, 2007, PDVSA would assume the projects' assets and activities.

ExxonMobil, ConocoPhillips, and OPIC Karimum rejected the Government's new terms and conditions and subsequently filed international arbitrations against Venezuela.

2008-2011

According to industry sources, PDVSA's excessive contributions to the Government's social programs, widespread mismanagement, lack of experienced personnel, and underinvestment have taken a serious toll on the State-owned company's capabilities to honor its contractual commitments. Reports indicate that PDVSA's debt to its service contractors totaled already US\$ 8 billion at the end of 2008. The Government's answer to this crisis consisted in drafting a law that would make it easier for PDVSA to seize the assets owned by service companies and to offer limited compensation, if any.

On May 7, 2009, Venezuela enacted the Organic Law that Reserves to the State the Assets and Services Related to Primary Hydrocarbons Activities (the "Reserve Law"), which basically nationalized the assets relating to water, steam, and gas injection services, gas compression activities, and maritime services in Lake Maracaibo. Over the following month, PDVSA and armed members of the Venezuelan National Guard took over the facilities, equipment, vehicles, inventory, offices, and personnel of dozens of service companies, while pending debts remained outstanding. No public reports suggest that PDVSA paid any type of compensation for these

takings, but at least four foreign investors (i.e., Universal Compression International Holdings, S.L.U., Tidewater Inc., John Wood Group, and the Williams Companies) have filed international arbitration claims seeking compensation.

In the wake of the 2011 oil price hike, the Venezuelan Government adopted measures to increase both the government take and production from the mixed companies. On April 18, 2011, President Chávez issued the Decree with the Rank and Force of a Law Creating a Special Contribution on Extraordinary Prices and Exorbitant Prices in the International Hydrocarbons Market. This law imposes an 80% windfall profits tax on oil exporters and the mixed companies that sell crude to PDVSA and its affiliates when the price of benchmark Brent crude hits the \$70 per barrel threshold. The rate increases to 90% and 95% if oil prices reach the \$90 and \$100 thresholds, respectively. The law also provides that “new projects” and those projects that increase budgeted production targets could be exempted from this tax if Venezuela’s Ministry of Energy and Petroleum so decides.

Who’s next?

Foreign oil companies have not been the only target of the Government’s nationalization policies. Banks, hotels, mining projects, supermarkets, power companies, farms, housing projects, coffee manufacturers, cement companies, steel and iron companies, airport operators, glass producers, soft drink bottlers, jewelry stores, agricultural companies, and food producers have experienced, to one extent or another, expropriatory measures. According to the website of the International Centre for Settlement of Investment Disputes (ICSID), seventeen investment claims are currently pending against Venezuela for measures adopted by the Chávez administration. The cases include:

1. *Vannessa Ventures Ltd. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB(AF)/04/6)
2. *Mobil Corporation and others v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/07/27)
3. *ConocoPhillips Company and others v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/07/30)
4. *CEMEX Caracas Investments B.V. and CEMEX Caracas II Investments B.V. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/08/15)
5. *Gold Reserve Inc. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB(AF)/09/1)
6. *Tidewater Inc. and others v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/10/5)
7. *Universal Compression International Holdings, S.L.U. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/10/9)
8. *Opic Karimum Corporation v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/10/14)

9. *Flughafen Zürich A.G. and Gestión e Ingeniería IDC S.A. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/10/19)
10. *Highbury International AVV and Ramstein Trading Inc. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/11/1)
11. *Nova Scotia Power Incorporated v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB(AF)/11/1)
12. *Crystallex International Corporation v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB(AF)/11/2)
13. *Longreef Investments A.V.V. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/11/5)
14. *The Williams Companies, International Holdings B.V., WilPro Energy Services (El Furrial) Limited and WilPro Energy Services (Pigap II) Limited v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/11/10)
15. *Koch Minerals Sàrl and Koch Nitrogen International Sàrl v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/11/19)
16. *OI European Group B.V. v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/11/25)
17. *Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal LDA v. Bolivarian Republic of Venezuela* (ICSID Case No. ARB/11/26)

This list does not include, however, the various ongoing arbitrations and court cases that have not been submitted to arbitration under the ICSID Convention.

It is difficult to predict who will be the subject of the Government’s next nationalizations. It is much easier to forecast that if things follow the current path, and President Chávez maintains his promise to nationalize “absolutely nothing,” many more Venezuelan and foreign investors are likely to join this unfortunate list. ♦

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Corporate Counsel Speak Out: Protecting Your Foreign Investments on the Front End

Every arbitration lawyer has at least once received a call from a transactional lawyer the night before a deal closing asking for “that model arbitration clause.” This approach of viewing the arbitration clause as a “boiler-plate” or “mid-night” clause should be avoided. The arbitration clause is an important provision that can “save” your investment if or when things do not go as planned and a dispute arises. Deal lawyers should pay close attention to the arbitration clause’s language and, when available, ask assistance from arbitration counsel. In addition, when investing in a foreign country it is important to determine whether you can obtain extra protection from a bilateral investment treaty (BIT), which provides access to international arbitration against the host country in case of treaty violations, including expropriation. This article highlights some of the issues that lawyers should consider when structuring foreign investments in terms of arbitration clauses and treaty protection.

Arbitration clauses should address four core elements: arbitration rules, number and method for selecting arbitrators, legal seat and applicable law. That being said, in most instances, the best approach to arbitration clauses is “the simpler, the better.” Meticulously crafted clauses that anticipate every potential procedural complication tend to create more problems than solutions.

“In a contract with a host government or state company, the parties may be able to choose arbitration under the ICSID rules, if the jurisdictional requirements for submission of disputes to arbitration at ICSID can be met.”

Regarding the arbitration rules, parties should choose rules from a renowned arbitration institution, such as ICC, ICDR, LCIA or ad hoc arbitration under the UNCITRAL Rules. In a contract with a host government or state company, the parties may be able to choose arbitration under the ICSID rules, if the jurisdictional requirements for submission of disputes to arbitration at ICSID can be met. By choosing the rules, the parties are normally also choosing the institution that will administer the arbitration, except in the case of UNCITRAL. Clauses that refer to one institution to administer the proceedings and a set of rules from another institution should be avoided or only included after careful consideration. This advice likewise applies to clauses that identify a different set of rules based on the type of dispute.

In our experience, complex disputes arising from foreign investments are better suited to be resolved by three arbitrators, despite the added cost. If the parties are uncomfortable with the method of appointing arbitrators under the applicable arbitration rules, they can specify another method in the arbitration clause. In addition, if the parties choose arbitration under the non-administered UNCITRAL rules, when they designate an appointing authority for purposes of arbitrator appointment they need to make sure it has the authority to make such appointment.

The seat of arbitration has enormous legal significance. It usually dictates the procedural law applicable to the arbitration, and most importantly, empowers the courts of the seat with supervising jurisdiction over the arbitration and an action to set aside the award. It is thus important to choose a seat whose local courts and laws have adopted a pro-arbitration approach, especially with respect to the grounds to set aside an award and how long such proceedings take. Finally, it is advisable to choose a seat located in a country that is a member of the New York Convention to increase your chances of successfully enforcing the award outside the host country. Recommended seats include Washington D.C., New York, London, The Hague, Paris, Geneva and Singapore.

With regard to the applicable law, if the agreement does not have a separate governing law clause, one should be added to clarify which law governs the substance of the arbitration. Preference should be given to a legal system that is favorable to foreign investments and your particular type of transaction.

In addition to carefully drafting arbitration clauses, lawyers should also consider structuring the investment to take advantage of a BIT in force with the host country, which in most cases provides access to international arbitration. This is particularly important when the arbitration clause under your agreement with the host State or its national oil company provides limited protections. For instance, sometimes, the seat of arbitration is required to be in the host country or access to arbitration requires unanimous approval of all joint venture partners. The tax implications of such structuring should also be determined. In addition to identifying a BIT, it is important to carefully review the treaty and consult experienced arbitration counsel if necessary. For example, special attention should be given to clauses that limit the treaty protection, such as clauses that provide a narrow definition of investment, tax carve-out, fork-in-the-road, limited access to arbitration, or broad necessity or public policy exceptions.

In sum, arbitration clauses and treaty analysis should receive special attention on the front end, when a foreign investment is being structured and the deal is being negotiated. Admittedly, on the eve of a closing, when deal lawyers face complex negotiations regarding commercial terms, technical aspects and rights and liabilities, the arbitration clause or treaty protection may seem less important. However, one should bear in mind that if things do not go as planned, an effective arbitration clause and/or treaty protection can make all the difference. ♦



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Chevron v. Ecuador Award Addresses Domestic Market Obligations¹

To satisfy domestic demand for hydrocarbons, some host governments require foreign oil companies to supply a portion of their production share for domestic consumption. This requirement is known in the industry as a domestic market obligation (“DMO”) and is relatively common in host government contracts throughout the world.

The two main terms in a DMO clause are: (1) the quantity of hydrocarbons that the foreign oil company must supply for domestic consumption; and (2) the price paid by the host government for the hydrocarbons. Most DMO clauses set forth a formula for calculating the percentage of the company’s production share that it must supply for domestic consumption. This formula generally requires the company to supply its pro rata share of total domestic consumption (based on its share of total domestic production), although the percentage may be subject to a contractual ceiling. While the method for calculating the price paid by the government for these hydrocarbons varies widely, the price is usually much lower than the international market price.

Historically, DMOs have given rise to two types of disputes between host governments and foreign oil companies. First, the parties to a contract containing a DMO clause may dispute the precise scope of the term “domestic consumption,” which DMO clauses rarely define. The recent arbitral award in *Chevron v. Republic of Ecuador* (discussed below) highlights the importance of careful drafting in this regard. Second, if the host government imposes a DMO after the parties have entered into their contract, or if it unilaterally increases an existing DMO under the contract, the company may have a claim for breach of contract and/or violation of an applicable investment treaty.

Examples of DMOs

Indonesia, the pioneer of production sharing contracts (“PSCs”) in the mid-1960s, has imposed DMOs on foreign oil companies since 1968. Article 14.9 of the Indonesian Model PSC of that year required the Contractor to supply for domestic consumption in any calendar year a quantity of Crude Oil equal to its “proportionate share of the total amount of Crude Oil

consumed for domestic market in Indonesia in such year,” provided that this quantity did not exceed 25% of the Crude Oil to which the Contractor was entitled under the contract. The price paid by the national oil company for this Crude Oil was equal to its cost plus a fee of \$0.20 per barrel. (Under recent Indonesian PSCs, the price paid by the national oil company for the first five years of production is equal to the export price of the oil; thereafter, the price paid is 25% of its export price.)

Equatorial Guinea has enshrined the DMO in its 2006 Hydrocarbons Law. Article 86 of that law provides that “[a]ll Contractors are obliged to sell and transfer to the State, upon written request of the Ministry [of Mines, Industry and Energy], any amounts of Hydrocarbons of a Contract Area and any amounts of Natural Gas processed in Equatorial Guinea by a Contractor or its Associate that the State shall deem necessary to meet domestic consumption requirements.” Article 86 further provides that the sales price of Crude Oil shall be established by contract, while the sales price of Natural Gas shall be established pursuant to the guidelines in the Hydrocarbons Law. Article 87 specifies a formula pursuant to which the Contractor must supply its pro rata share of total domestic consumption. Equatorial Guinea’s Model PSC of 2006 contains a short DMO clause that expressly refers to Articles 86 and 87 of the Hydrocarbons Law.

Chevron v. Republic of Ecuador

On March 30, 2010, the arbitral tribunal in *Chevron v. Republic of Ecuador* issued an award interpreting and applying the DMO clause in the 1973 Concession Agreement among the Government of Ecuador, Texaco Petroleum Company (“TexPet”), and Gulf Oil. Clause 19.1 of the Agreement granted the Ministry of Natural and Energy Resources the right to require, “when it deems it necessary,” the supply of oil for “refining and industrial plants established or which may be established in the country.” Clause 19.1 further provided that this requirement had to apply to all producers in the country, including the national oil company, and set forth a formula for calculating the percentage of each producer’s production share that it would have to supply. This formula made clear that the supply of oil pursuant to

¹ This article is adapted from Part III.E.1 of “Update on *Lex Petrolea*: The continuing development of customary law relating to international oil and gas exploration and production” (*Journal of World Energy Law and Business*, forthcoming 2011) by Thomas Childs.

“Ecuador argued in the arbitration that it was entitled to pay the lower domestic price for a barrel of crude oil...”

Clause 19.1 was for “national domestic consumption.” Clause 20 provided that the price of oil for domestic consumption was set by the Ministry, while the price of oil for export was the international market price.

As explained in the tribunal’s award, Ecuador rarely invoked Clause 19.1 in the first several years of the 1973 Agreement because it had limited refining capacity at that time. Instead, Ecuador would demand so-called “Compensation Crude” from the contractors under Clause 19.2, which allowed Ecuador to purchase oil at the reduced domestic price and export it at the higher international price, provided that it used the profit from this transaction to purchase derivative products for import to Ecuador. Domestic consumption was to be satisfied by the combination of DMO contributions under Clauses 19.1 and 19.2.

In the early 1990s, disputes arose between the parties related to Ecuador’s export of certain quantities of products derived from TexPet’s DMO contributions. It was common ground between the parties that: (1) TexPet had supplied the oil for domestic consumption under Clauses 19.1 and 19.2; (2) Ecuador had refined the oil and sold a portion of the derivative products in the domestic market; (3) Ecuador had, however, exported a portion of the derivative products (fuel oil, diesel oil and residual oil) that it could not sell domestically, without using the profit to purchase other derivative products for import to Ecuador and without paying TexPet the international market price. Between 1991 and 1993, TexPet filed seven breach-of-contract cases against Ecuador in the Ecuadorian courts, claiming more than \$553 million in damages related to its alleged overcontribution to domestic consumption.

Because of the failure by the Ecuadorian judges in these seven cases to rule on TexPet’s claims for well over a decade, Chevron and TexPet initiated an arbitration against Ecuador under the U.S.-Ecuador Bilateral Investment Treaty (“BIT”), claiming denial of justice under customary international law and violations of Ecuador’s treaty obligations under the BIT, including its obligation to provide TexPet with an effective means of asserting claims

and enforcing its rights. To rule on these claims, the arbitral tribunal had to determine whether TexPet had succeeded in proving its cases in the Ecuadorian courts.

Ecuador argued in the arbitration that it was entitled to pay the lower domestic price for a barrel of crude oil that it used to create derivative products for export, provided only that it used part of the barrel to create derivative products that were consumed domestically. In the arbitral tribunal’s words, the essential issue was thus whether “the crude oil requested by Ecuador from TexPet [was] to be priced according to the crude oil inputs to the refineries or according to the ultimate destination of the derivatives products from the refineries.”

The tribunal agreed with Claimants that the crude oil was to be priced according to the ultimate destination of the derivative products. In support of this interpretation of the 1973 Agreement, the tribunal relied on four factors. First, in the original Spanish text of Clauses 19 and 20, the word “derivatives” was modified by the phrase “*destinadas al consumo interno*” (“destined to the domestic consumption”). Second, because Ecuador had to pay for the DMO contributions on a quarterly basis, they were not equivalent to barrel-by-barrel sale contracts; rather, the price paid for the DMO contributions was still open until the ultimate destination of the derivatives was ascertained. Third, the parties had entered into a one-year contract in 1977 containing language that confirmed the Claimants’ interpretation. Fourth, the evidence showed that it is industry practice for producers to be compensated at the international market price for all derivative products that are exported.

Conclusion

While DMO clauses are found in many host government contracts, the precise scope of the DMO may be unclear. To avoid costly and time-consuming disputes, the parties should specify in their DMO clause how “domestic consumption” is defined and whether and under what conditions the host government may export any portion of the products derived from the foreign oil company’s DMO contributions. ♦

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Resources on Resources:

Publications, Research and Databases Available to Help the Advocate in International Oil & Gas Disputes

This article provides a short overview of useful resources for lawyers acting as advocates in international oil and gas disputes. The list is, of course, not exhaustive and at least some of the websites are already well known. A quite varied group of references are included, from online publications, to professional and industry associations, to international agencies and organizations, among others. The common element among the several resources listed is the focus on oil & gas issues. Resources appear in alphabetical order.

American Association of Petroleum Geologists (AAPG, www.aapg.org)

The AAPG is a geological society with 30,000+ members across the world. Its purpose is to “foster scientific research, advance the science of geology [and] promote technology.” The AAPG publishes the *Bulletin*, a monthly scientific “journal featuring peer-reviewed papers on geoscience”; the *AAPG Explorer*, a monthly publication of current news and developments in the petroleum industry; and the *Environmental Geosciences Journal*, published quarterly and featuring contributions relating to intersections between the environment and the petroleum industry, from a geological approach. In addition, the AAPG also maintains an online journal, Search and Discovery, through which it makes available a database of energy-oriented articles and papers, focusing on oil, gas and minerals. The AAPG also offers access to a 64,000+ article bank that includes publications from several journals in the field, through AAPG Datapages. Furthermore, the AAPG maintains an online bookstore. Price - while access to publications is generally membership based, some materials are available for a fee, including the articles featured in AAPG Datapages.

American Bar Association, Section of Environment, Energy and Resources (www.americanbar.org)

The ABA Section of EE&R offers to its members three regular publications dedicated to environmental, energy, and natural resources issues: *Natural Resources & Environment*, *Trends*, and *The Year in Review*. *Natural Resources & Environment* is a quarterly magazine that features short articles on current topics, reviews of books and periodicals, and interviews with prominent

professionals in the industry. *Trends* is a bimonthly newsletter covering important developments, news, and activities. *The Year End Review* is an in-depth yearly summary of judicial decisions, new legislation, and regulatory developments.

The ABA Section of EE&R also promotes and organizes conferences, roundtables, and other events relating to environmental, energy, and natural resources law. In addition, the ABA Section of EE&R maintains an online bookstore.

Price (annual) - Section of EE&R membership dues (annual) USD 75 (on top of annual ABA membership dues ranging between USD 125-399, depending on year of original bar admission). Membership benefits include subscription to the Section’s regular publications and discounts on conferences and related events.

Association of International Petroleum Negotiators (AIPN, www.aipn.com)

The AIPN maintains a website through which its members may access international model contracts (JOAs, transportation, sales, dispute resolution, and confidentiality among others) developed by AIPN model contract committees, many with guidance notes. The website also operates as a forum where members can share comments, submit informal requests, and provide references to its peers.

Membership also enables online access to the AIPN’s two publications: *The Journal of World Energy Law & Business* (Oxford University Press), the official journal of the AIPN, and the *Advisor*. The Journal publishes articles on legal, business, and policy issues in the international energy industry, including upstream oil and gas transactions, finance, taxation, regulation, dispute management, alternative energy resources, energy policy and security, and international energy organizations. The *Advisor* is a quarterly newsletter that keeps members abreast of AIPN initiatives, features short special interest articles, and informs on important events relating to the industry, such as licensing rounds, updates on country laws, and government contract terms (issues as of 2000

available to members in digital format). The AIPN's website also makes available several research papers on a variety of industry issues; the research papers are prepared by authors selected and funded by the AIPN annual research grant program. In addition, the AIPN posts on its website conference and chapter presentations available to all members.

Price (annual) - individual membership dues USD 150.

Baker Institute Energy Forum, Rice University
(www.rice.edu/energy/index)

Created in 1993, the James A. Baker III Institute for Public Policy develops and promotes original and up-to-date research on a multitude of topics, from a public policy perspective. One of the hallmarks of the Institute's research focus has been the Energy Forum, since its inception in 1996. The Baker Institute Energy Forum (BIEF) is a leading think-tank in the field, conducting "major studies" and producing multidisciplinary industry-related reports on current challenges and prospective developments in the energy sector. The research covers a vast array of issues that can prove helpful to the international oil & gas advocate, such as comprehensive reports on national oil companies, studies on the geopolitics of natural gas and on global energy markets, and region-focused surveys of the energy sector in Brazil or the Caspian States, among others. In addition to the more comprehensive studies, the BIEF also makes available to the public essays prepared by Rice University faculty members as well as scholars, practitioners, and experts from around the globe. In conjunction with the research, the BIEF offers workshops, seminars, and lectures on energy issues.

Price - access to studies, reports, and essays is free. Extensive bibliography and further hard copy materials are available at the Institute's library, with access limited to members. Membership fees (annual) to the Energy Forum range between USD 10,000 and 50,000, depending on type of membership and number of persons invited to participate in events.

Barrows (www.barrowscompany.com)

Barrows Company Inc. maintains an international online database that contains the laws and contracts governing petroleum and mineral exploration and production in virtually all countries. Materials are in complete text, in English (but for a few occasions in which text is available only in the original language of the relevant jurisdictions).

The materials are organized under two databases: petroleum (Basic Oil Laws & Concession Contracts,

BOLCC) and mining (Mining Legislation). The BOLCC is divided into eight regions, which allow users to purchase subscriptions based on the regional area(s) of interest. The Mining Legislation's coverage is world-wide. Additionally, Barrows offers a bimonthly Petroleum Taxation and Legislation Report, which provides updates on tax matters related to the oil and gas industry, organized per jurisdiction.

Recently, Barrows announced the launching of a new product: the "World Rating of Oil and Gas Terms" (WROGT). The WROGT is "the most detailed and comprehensive description, analysis and rating of oil and gas fiscal terms ever published." The study features six separate reports on North America Onshore Wells and Shale Plays; Deep Water; Shallow Water; International Onshore; Arctic Onshore and Offshore; and an Executive Summary. Rating is based on several criteria, including profitability, investor scenario, geological risk, and sensitivity analysis.

Most international oil companies and many international law firms subscribe to some or all of the Barrows materials.

Price (annual) - BOLCC: varies significantly according to the number of regional subscriptions; USD 3,900 (per region); USD 31,200 (total for all regions). Mining Legislation: USD 2,400; plus USD 4,900 optional one time fee for past issues. Taxation Report: USD 4,500. WROGT: USD 43,000 for the complete study, featuring six reports; each individual report is also available separately, with prices ranging between USD 9,000 and 19,000.

Center for American and International Law (CAIL, www.cailaw.org)

The CAIL, formerly the Southwestern Legal Foundation, encompasses several institutes focusing on legal aspects of US and international law, including the Institute for Energy Law (IEL). The IEL edits and publishes *The Oil and Gas Reporter* (OGR) and the *Proceedings of the Institute on Oil and Gas Law* (PIOGL). The OGR provides analysis and case notes of cases and revenue rulings on oil and gas issues. The PIOGL is an edited, hard-bound volume of the papers presented at the annual meeting of the IEL.

Price - n/a (both the OGR and the PIOGL are available through LexisNexis). Membership dues (annual): range between USD 75-5,000, depending on individual or

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Resources on Resources

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corporate nature and privileges.

Center for Energy Economics, University of Texas (CEE-UT, www.beg.utexas.edu/energyecon)

The CEE-UT researches and educates on matters relating to energy economics, targeting an audience of “industry managers and their legal advisors, and government and policy makers and regulators.” In addition to courses and academic programs available, the CEE-UT publishes Energy Guides, research reports and papers, case studies in oil, gas & power focusing on projects across the globe, contract reports, conference presentations, and articles in periodicals. CEE-UT also maintains an online public forum, *ThinkCorner*, “where experts from CEE and [its] global networks” share comments, views, and research relating to the energy industry, market, and policy.

Price - access to materials is free (although access to some items is limited to students and institutional affiliates).

Centre for Energy, Petroleum and Mineral Law and Policy at the University of Dundee (CEPMLP, www.cepmlp.org)

The CEPMLP, in addition to its postgraduate degree programs and research projects in the energy field, maintains an online *Annual Review* (CAR) where CEPMLP students and affiliates publish their research. The CAR issues are available since 1997 and include contributions focusing on a wide array of matters, from international disputes relating to energy investments, to legal aspects and policy considerations in oil & gas projects, to the interpretation and allocation of risk in oil & gas contracts, to mineral and environmental issues, among others.

Price - access is free.

Energy Information Administration (EIA, www.eia.gov)

The U.S. Energy Information Administration (EIA) is an agency within the U.S. Department of Energy that collects and releases statistical information and produces analysis in relation to the entire spectrum of energy

sources, namely petroleum and other liquids, natural gas, electricity, coal, renewables and other alternative fuels, and nuclear and uranium. The EIA website features periodical reports (weekly, monthly, quarterly and yearly) with domestic and international information on production, generation, uses, market flows, stocks, emissions, short- and long-term forecasts among other topics. It also features regional and worldwide maps per source of energy, including forecast maps. Further, the EIA analyzes the energy markets focusing on different aspects such as consumption and efficiency, financial markets, major energy companies and factors driving market prices. In addition, the EIA prepares specific publications per topic, region and/or energy source.

Price - access is free.

Energy Intelligence (EI, www.energyintel.com)

The Energy Intelligence (EI) is a company that reports on and analyzes matters concerning the international oil & gas industry. EI offers 14 different newsletters, each one of them focusing on a different aspect of the market. Content and style of each newsletter varies according to the resource (oil, gas, uranium, jet fuel), the geographic market surveyed (e.g. North America, former Soviet Union, global market), and the frequency of publication (daily, weekly). Although the content of some of the newsletters partly overlaps, each of them focuses on specific aspects of the energy market.

In addition to this service, EI also offers in-depth yearly reports on specific topics and regions. Each of these reports can be purchased separately. Another useful service provided by EI is the custom reports or studies produced by a specialized research and advisory team. Each aspect of the service (geographic area, resource, focus, price, length) is tailored to the client's particular needs. Types of clients vary greatly, including energy-related companies, law firms, and even States. Expert services are provided.

Price (annual) - Newsletters: subscriptions range between USD 2,000-3,000 (per newsletter). Annual Research reports: subscriptions range between USD 1,500-2,500. Custom-reports: n/a.

Global Energy Review (GER, www.globalenergyreview.co.uk)

The GER is a recently launched resource featuring news and analysis of energy law and regulation. The GER reports on and/or publishes community news, developments in energy policy, regulation and legislation

worldwide, deals and M&A transactions, interviews with industry professionals, energy-related litigation and arbitration, and corruption and antitrust investigations in the energy field.

News and articles are searchable by date, practice area, region, and/or word. The GER emails subscribers two news briefings a week, which makes it easier for readers to keep abreast of developments. The GER is part of the Law Business Research group, which includes sister publications *Global Arbitration Review*, *Global Competition Review*, *Latin Lawyer*, *Who's Who Legal* and *Getting the Deal Through*.

Price (annual) - firm-wide subscription: USD 3,300. Individual subscription: USD 660. Free weekly email briefing available to interested parties upon registration on GER's website.

Groupe International des Importateurs de Gaz Naturel Liquéfié (GIIGNL, www.giignl.org)

The GIIGNL is an organization that provides information regarding economic aspects of the LNG industry. Through its website, the GIIGNL makes available papers and reports relating to LNG markets and operations and cutting-edge LNG technology and activities; it also makes available model contracts relevant to the industry. In addition, the GIIGNL publishes an annual detailed report on the LNG industry every Spring.

Price - materials listed above are available for free. Additional contents are shared with and among members.

International Bar Association, Section on Energy, Environment, Natural Resources and Infrastructure Law (IBA-SEERIL, www.ibanet.org)

The IBA-SEERIL focuses on legal aspects of oil & gas, power, environment, mining, water, and international construction projects. Within the SEERIL, each of these fields is allocated to a specific committee which publishes a (usually) biannual newsletter with updates and short contributions from industry practitioners. The several committees also provide timely information on conferences and other events pertaining to each field.

In addition to the SEERIL specific publications, the IBA publishes quarterly the *Journal of Energy and Natural Resources Law*, which features more academic contributions in all areas of energy and natural resources law.

Price (annual) - individual membership dues range

between GBP 69 and 225. Access to committee publications is available to committee members (and to other IBA members at reduced rates). Members of the IBA-SEERIL are granted free access to the *Journal of Energy and Natural Resources Law*. Newsletters and specific articles are also available to non-members for a fee.

International Energy Agency (IEA, www.iea.org)

The IEA provides access to raw data and insight on the energy markets worldwide, with information organized by country and energy resource. Most of the products available require subscription or the payment of a one-time flat fee, although there is also substantial information made available free to the public. Specifically, the IEA offers annual data subscriptions for *Energy Statistics Reports*, which include "basic energy statistics" and "conversion factors." The IEA further offers *Monthly Oil and Gas Data Services*, including information on supply, demand, balances, and stocks. The IEA also produces monthly *Oil Market Reports* (OMR) including energy statistics, balances, historical data (since 1960), stocks, and short-term forecasts. The OMRs are available for free with a two-week delay.

In addition, IEA publishes an *Annual Energy Outlook*, released each November, including "updated projections on energy demand, production, trade and investment, fuel by fuel and region by region to 2035." IEA also publishes autonomous studies on energy (e.g., *Medium-Term Oil and Gas Markets Report*) at relatively accessible prices, focusing either on a particular resource or on a country/region.

Finally, IEA makes available without charge numerous essays, articles, and studies from different standpoints (technical data and analysis, energy policies, industry-oriented, region- or country-oriented, among others), as for example a recent study on "Overseas Investments by Chinese Oil Companies."

Price - varies greatly depending on subscription and number of users. *Annual Energy Outlook*: USD 120. Country and/or resource studies and reports: price ranges between approximately USD 80-250.

Institute Français du Pétrole - Energies Nouvelles (IFP-EN, www.ifpenergiesnouvelles.com)

IFP-EN "is a public sector research, industrial innovation and training center." Initially founded as a research organization in the oil & gas field, it has extended

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its scope to other energy sources, notably alternative renewable energies. The institute publishes *Oil & Gas Science and Technology* (OGST), a bimonthly journal featuring contributions from all “disciplines and fields” relevant to upstream, midstream, and downstream oil & gas issues. Additionally, the IFP-EN maintains a searchable database containing articles, papers, theses, and other materials (in some cases, the documents are available in full text; in others, only a summary is available online). The IFP-EN makes available through its website autonomous, substantial studies on many energy issues. It also publishes year-end technical reports and summaries on a variety of topics, such as a summary of E&P activities and markets, an analysis of short-term trends in the gas industry, and a report on the regional aspects of refining. The IFP-EN maintains an online book store.

Language - English and French.

Price - materials are available for free; books are for sale at the online bookstore.

Investment Arbitration Reporter (IA Reporter, www.iareporter.com)

The IA Reporter “is an electronic news service tracking cross-border arbitrations between foreign investors and their host governments,” including ICSID, NAFTA, CAFTA, and UNCITRAL, to name the most common. It does not focus specifically on oil & gas disputes, although a significant number of investment arbitrations are related to the energy industry. A particularly useful feature of this online resource is how it presents available information in a timely manner, offering short news reports and analysis on relevant issues of investment arbitration. This information covers a broad variety of topics, such as summaries of and commentary on recent cases, updates on policy developments in specific jurisdictions, information regarding investment treaties, and news relating to law firms and arbitrators. News can be searched by theme. The IA Reporter further offers an extensive, though not exhaustive, database of investment arbitrations decisions.

Language - English.

Price - n/a.

Investment Claims (IC, www.investmentclaims.com)

IC (Oxford University Press) is an online database in the field of investment law and arbitration. Like the IA Reporter, IC is not devoted only to oil & gas disputes. IC provides access to an extensive archive of exclusively legal materials related to investment arbitration: awards, treaties, institutional rules, national arbitral laws, and commentaries. A useful feature: the case-law database is searchable by arbitrator and legal counsel. IC offers free alerts on several topics, including awards and recent BITs.

Language - English.

Price - n/a.

Oil & Gas Journal (OGJ, www.ogj.com)

The OGJ is published weekly and covers up-to-date “international oil and gas news; analysis of issues and events; practical technology for design, operation and maintenance; and important statistics on international markets and activity.” Information and analysis are organized by topics and discipline: general interest, Exploration & Development, Drilling & Production, Processing and Transportation.

Additionally, the OGJ is a valuable source for statistics in the industry, including oil and gas reserves by country, oil production (in some cases, even by individual fields), and producing oil well estimates. These statistics are published yearly. OGJ also maintains an online database covering several major sources of energy statistics worldwide (requires subscription, although some information is also available free on the website). In addition, the OGJ provides online research services (for a fee).

Price (annual) - USD 99. The OGJ is part of the PennWell Petroleum Group, which includes other publications, such as Offshore Magazine; Oil, Gas & Petrochem Equipment; Oil & Gas Financial Journal; LNG Observer; and The Petroleum Buyers’ Guide.

Oil, Gas, Energy Law Intelligence (OGEL, www.ogel.org)

Oil, Gas, Energy Law Intelligence, founded by Professor Thomas Wälde in 2003, is an energy portal that offers several services and products: the *OGEL Journal*, the *Legal and Regulatory Materials* database, and OGELFORUM. OGEL has a sister publication, *Transnational Dispute Management* (TDM), and both have

strong ties to the Centre for Energy, Petroleum and Mineral Law and Policy at the University of Dundee (CEPMLP).

The *OGEL Journal* focuses on current debates and developments in the area of energy law, in general, and oil & gas, in particular. Topics covered include case-law, treaties, regulatory and tax measures, and geopolitics of the industry. Most of the information is summarized in short abstracts which provide a quick overview of the subjects covered in each issue. The *Legal and Regulatory Materials* include an extensive database of laws and regulations—under construction—and also numerous “soft” law instruments (e.g., guidelines, standards of conduct). The OGELFORUM is a discussion group on current global and regional energy-related topics, which, according to OGEL, “brings together most of the world’s experienced professionals in the field of oil, gas and energy law, regulation and policy.” The forum benefits from the comments by students and faculty at CEPMLP.

TDM (www.transnational-dispute-management.com), launched in 2004, is an international dispute management intelligence service combining different styles and formats: newsletter, review-journal, internet service, and primary materials database which goes across disciplines. It focuses on investment arbitration with a particular emphasis on the areas of oil, gas, energy and mining, and it reports on all types of international dispute resolution mechanisms.

The main product offered by TDM is the *TDM Journal*, published on a bimonthly basis, with contributions from a wide array of investment law, oil & gas, and energy professionals. TDM’s subscription also grants access to *Legal and Regulatory Materials*, a database which appears directly related to if not the same as the OGEL *Legal and Regulatory Materials* described above. In addition, TDM also permits subscribers to participate in OGEMID, a discussion forum in the fields of oil, gas, energy, mining, and infra-structure operating along similar lines as OGELFORUM and also benefiting from the commentary by students and faculty at CEPMLP. See also the related publication Oil & Gas Observer (www.oilandgasobserver.com).

Price (annual subscription) - OGEL: varies. For private companies, a license for up to five users costs EUR 995 and a license for up to 25 users costs EUR 3,850. TDM: same as OGEL. Note: OGEL offers a joint subscription of Transnational Dispute Management (OGEL/TDM), with a 50% discount on the TDM subscription.

OnePetro (www.onepetro.org)

Launched in 2007, OnePetro.org is a multi-society library providing access to a wide variety of technical articles, papers, and other documents relating to the oil and gas E&P industry. The search engine covers publications and databases from different professional organizations in the industry, and enables searches according to multiple criteria. The database currently includes 85,000+ documents. Thus, OnePetro purports to offer “a comprehensive body of knowledge readily accessible by anyone needing technical information related to the upstream oil and gas industry.”

Price - varies according to specific documents.

Organization of the Petroleum Exporting Countries (OPEC, www.opec.org)

Through its website, OPEC provides institutional information and market data as well as access to the OPEC’s Conference Resolutions (apparently, only Resolutions passed until December 2008 are available). Additionally, OPEC also makes available to the public the official speeches given by the Secretary-General or other OPEC officials, under the Press Room section of the website. Finally, the OPEC publications webpage contains additional, potentially useful information, including the *OPEC Bulletin*, specific information about each of the Member Countries, and oil market reports.

Price - access is free.

Oxford Institute for Energy Studies (OIES, www.oxfordenergy.org)

The OIES is an autonomous advanced research center that conducts activities relating to economics of petroleum, gas, and coal, among other energy resources, the politics and sociology of energy, the relation between oil-exporting and oil-importing nations, and environmental issues in connection to energy. The OIES makes available to the public articles published by authors affiliated with the institute, as well as presentations submitted to conferences and seminars by the OIES research team members. In addition, OIES publishes the *Oxford Energy Forum*, a “quarterly journal for debating energy issues and policies.” Furthermore, the OIES also provides access, through its online bookshop, to studies focusing on international energy issues, searchable by country, topic, and/or energy resource.

Price - access to articles and presentations is free; access to OEF is subscription based (annual): USD 85;

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online bookshop: some studies are available for a fee (price varies, starting at USD 15), although others are downloadable without charge.

Petroleum Economist (PE, www.petroleum-economist.com/default.asp)

The PE is a publishing brand that offers several products relating to the oil and gas industry, including the monthly publication *Petroleum Economist Magazine* (PEM). PEM contains high-profile articles on current market, economic and political issues related to the industry. The analysis covers several world regions from both an oil and a gas perspective. The PE also offers a separate subscription to a “portfolio of global and regional maps” and, through its online Book Store, sells numerous books and reports prepared by industry experts.

Price - PEM (yearly subscription): USD 1,395. Maps Portfolio: varies. Books and Reports: varies.

Rocky Mountain Mineral Law Foundation (RMMLF, www.rmmlf.org)

The RMMLF is a non-profit educational organization devoted to the study and research of legal aspects of mining, oil and gas, water, and other related subjects. The Foundation makes available through its website an online digital library, encompassing more than 50 years of scholarship and research, which provides access to the full text of all the Foundation papers and articles. The RMMLF also offers through its website the annual institute proceedings since 1990. In addition, it publishes textbooks and manuals on the legal aspects of the resources to which the Foundation is dedicated, including a manual on international petroleum transactions.

Price - Online Digital Library (annual): ranges between USD 295-495 depending on number of users and IP rights restrictions. Special thematic books: varies. Membership dues (annual) range between USD 445-3,295, depending on individual or corporate nature and number of users.

Society of Petroleum Engineers (SPE, www.spe.org)

The SPE unites “92,000+ professionals around the world and across many disciplines.” The SPE publishes the *Journal of Petroleum Technology* (JPT), which offers briefs and features on E&P technology, oil and gas industry themes, and news about SPE and its members. The SPE also offers through its website a valuable summary reference of publications and companies reporting on and/or providing products and services related to industry news (also available by activity or discipline), industry statistics, petroleum reserves & resources, technical interest groups, as well as searchable directories with E&P Consultants and R&D providers. In addition, the SPE maintains a comprehensive online bookstore of technical books and promotes meetings and events related to the industry. SPE papers are now published on OnePetro.

Price - some of the information is available for free, although access to papers and other publications is available for a fee, with membership discounts. Membership dues (annual) range between USD 10-90 and include access to *JPT*.

Upstream (www.upstreamonline.com)

Upstream is a weekly newspaper that offers up-to-date news coverage relating to the oil & gas industry. The newspaper targets high profile executives and decision makers. Information and analysis are organized by region, field (E&P, Field Development, Company, Politics, Technology), and type of piece (news, opinion, interview, etc). In addition to news and the opinion, each week Upstream features profiles of noteworthy industry professionals and in-depth reports on specific issues or regions. Upstream also provides real time access to the main indicators and oil & gas prices, as well as to share prices for oil companies and contractors. Access is available only to subscribers. Subscription includes weekly newspaper in hard copy, full access to online version, and unlimited access to Upstream archives and previous issues.

Price (annual) - USD 985.

The World Bank (WB, www.worldbank.org)

The WB’s website provides access to raw data on virtually every economically and socially relevant indicator, by country (download available). The WB also maintains a database of “over 80,000 free, downloadable documents, including operational documents (project documents, analytical and advisory

work, and evaluations), formal and informal research papers, and most Bank publications” on a multitude of topics and industries, including energy in general and oil & gas in particular. These materials are searchable by topic/industry and by region/country. In addition, the WB publishes studies and books available at reasonable cost (starting at USD 10), again on a wide array of topics and industries and searchable by region/country, language, and/or subject.

Price - access is free.

Other Online Resources

In addition to the online resources previously mentioned, there are, of course, numerous companies and intelligence groups that provide specialized services in the oil & gas industry at (generally more substantial) cost. In addition to specific products, such as tailor-made studies, and consulting services, these providers maintain on their database generic studies and reports available only to subscribers. Among these resources: Business Monitor International (www.businessmonitor.com), Gas Strategies (www.gasstrategies.com), IHS-CERA (www.ihs.com), Menas Associates (www.menas.co.uk/home.aspx), Potent & Partners (www.poten.com), and Wood MacKenzie (www.woodmacresearch.com). ♦

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Jorge Mattamouros is an associate in the Houston office, and a member of the firm’s International Arbitration Practice Group. He has acted as counsel in arbitration proceedings under the rules of the International Court of Arbitration of the ICC, the UNCITRAL, and ICSID. He has also acted as an arbitrator in ICC arbitration proceedings, and co-authored expert opinions on matters regarding contract risk allocation under Portuguese law. Jorge has handled disputes in Latin America, Africa and Europe, in a variety of sectors, including oil & gas, energy, construction, distribution, telecommunications, air transportation, and textile industry. Jorge is a graduate of Harvard Law School (LLM), and a Doctoral Candidate at the Law School of the New University of Lisbon, Portugal. Jorge is admitted to practice in New York and a member of Portugal Bar. He speaks Portuguese (native), English, Spanish and French, and has working knowledge of German and Italian.

Upcoming Events

Practical Solutions to Common Issues in the Energy Sector

7 December 2011

Offices of King & Spalding
London, UK

Presenters: King & Spalding lawyers including Nina Howell, Martin Hunt, Hywel Jones, John Keffer, Garry Pegg, Suzanne Rab, Tom Sprange and Marcus Young

New Frontiers in LNG Exports

13 December 2011

The Houstonian Hotel
Houston, Texas

Presenters: King & Spalding lawyers Philip Weems and Dan Rogers

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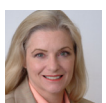
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