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MEIO	Petroleum Africa			
Nº PAG.	3	DATA	19 de agosto de 2019	

MONTHLY FOCUS

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When the Time Comes...

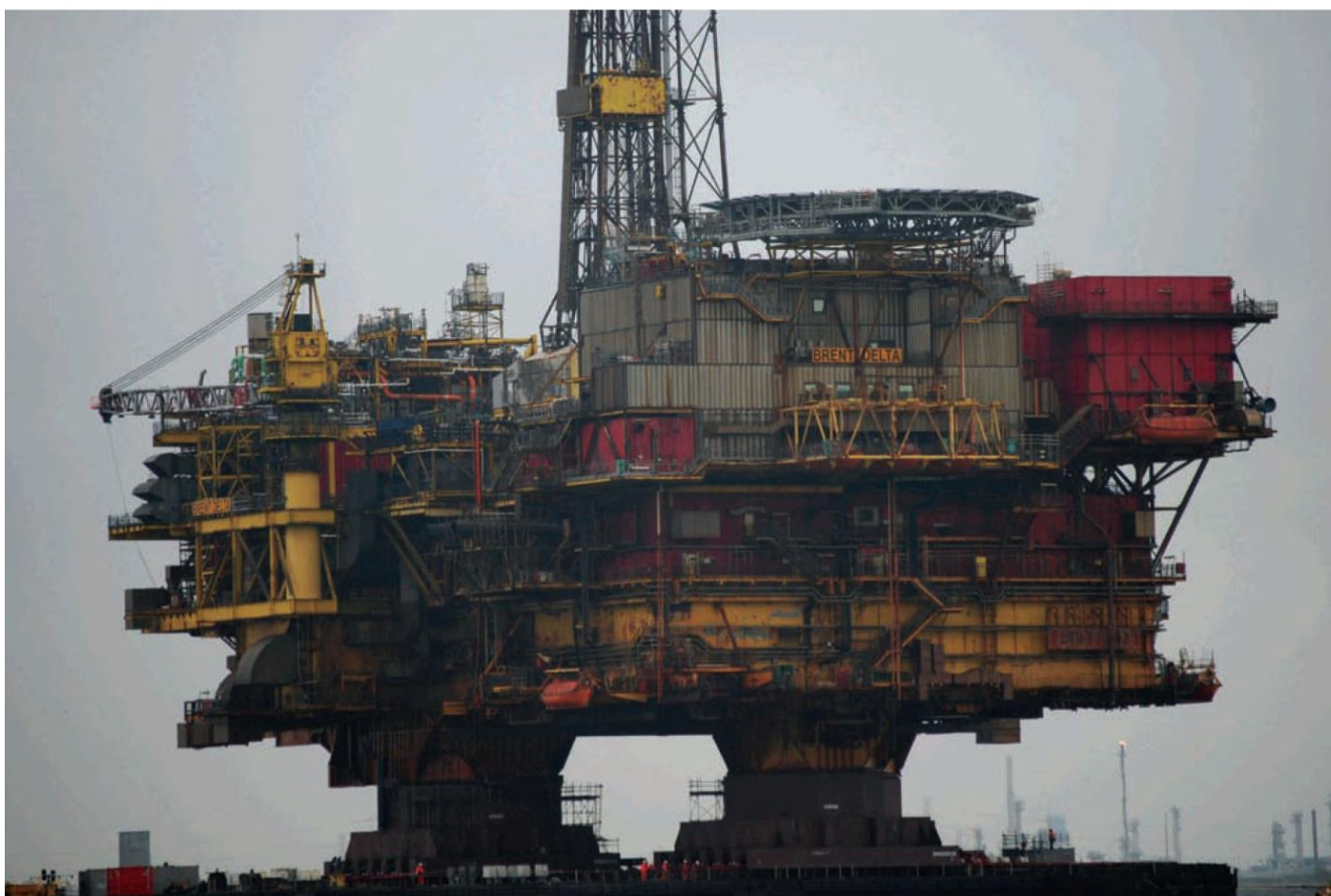
Brief considerations on the new Angolan abandonment and decommissioning framework


For decades the main concern of both oil companies and Host Nations was to discover hydrocarbon reserves and monetize them as quickly as possible, so as to generate value for shareholders on the one hand, and State revenue on the other. As more fields were discovered and brought on stream, new technology developed to allow for secondary and tertiary recovery, and then with smaller companies taking over mature fields, decommissioning and abandonment of depleted oilfields was far from most players' minds. This state of affairs has, however, come to a swift end, as all over the world both companies and States are beginning to struggle with the environmental and economic legacy of fields that were first developed at a time when the environment was far from the priority that it has become in recent years.

Everywhere from the North Sea to West Africa, to faraway South East Asia and Australia, companies and regulators are coming to terms with the amount of work to be done in the near future to decommission depleted fields, and the financing, technical and regulatory challenges to do so. This latter point is critical especially in relation to small companies that have taken over operations towards the end of field life from larger IOCs, and that have a much weaker financial position and technical capacity.

The state of the play in Angola

The same situation briefly mentioned above can also be found in Angola, where mature fields have over the years been taken over and redeveloped by smaller players and/or Sonangol. Environmental



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concerns have already arisen in respect of some of these fields, where the structural integrity of certain facilities has recently been questioned by the regulators. Additionally, some of the larger companies have also come to the point where they are starting to plan for decommissioning of older facilities and plugging and abandoning depleted wells and require certainty in terms of technical rules and decommissioning-related financial aspects.

Up until recently the Angolan Petroleum legal framework was mostly silent on decommissioning and abandonment, and not 100% clear on other environmental issues.

In terms of decommissioning and abandonment, Article 75 of the Petroleum Activities Law required Sonangol and the contractor group to jointly submit an abandonment plan and carry out the activities required to abandon wells and decommission facilities in accordance with the law and good oilfield practice. However, the law did not further regulate these issues, and “good oilfield practice,” being a great catch-all term, often raises significant interpretative complexities. For instance, probably the area of the world where decommissioning has been most developed in the past is the North Sea; but does it make sense for the North Sea standards to be applied in West Africa, where the habitats, operational environment and oil producing facilities are different to those in the north of Europe?

On the other hand, in terms of environmental claims, while it appeared clear that IOCs would be responsible generally for damages arising out of petroleum activity-related claims under a presumption of fault regime contained in the petroleum legislation, the environmental legislation applied a strict liability framework to any environmental damages irrespective of how they were caused. In turn the allocation of liability between the IOCs and the then national concessionaire, Sonangol, E.P. would have to be assessed under the respective petroleum contract. Most contracts also stated that IOCs would be liable towards the State and Sonangol for any damages they caused to them. To add another layer of complexity, over the years there have been different petroleum contract “generations” in Angola and, although they mostly follow a common root, there are variations from contract generation to contract generation.

Some of the biggest issues that companies have struggled with include how to treat residual liability, what provisions exactly are applicable to abandonment, how will the decommissioning accounts established under certain PSCs be operationalized and used, and what happens to decommissioning liabilities in case of takeover of facilities and operations by the NOC?

New decommissioning regulations

In 2018, the restructuring of the Angolan oil sector to make it more attractive to investors was the perfect opportunity to also address the above identified issues, notably through the enactment of Presidential Decree 91/18, of 10 April 2018.

The first notable issue that the new regulations addresses is the requirement of all contractor groups to constitute abandonment funds by depositing the relevant funds into an escrow account that will be mobilized to pay for decommissioning at the end of field life.


This statute establishes the “rules and procedures for abandonment of wells and decommissioning of oil & gas facilities in national territory,” setting forth a regulatory framework that is mandatory for all companies carrying out petroleum operations in Angola and applies as of 1 January 2019. In practice, this means that the Angolan government seeks to apply all provisions of Presidential Decree 91/18 to existing petroleum concessions, therefore superseding contractual provisions which are not aligned with the new rules.

The first notable issue that the new regulations address is the requirement of all contractor groups to constitute abandonment funds by depositing the relevant funds into an escrow account that will be mobilized to pay for decommissioning at the end of field life. The provision of the abandonment fund shall commence at different times depending on whether or not we are dealing with new concessions, new development

areas, or development areas and concessions existing prior to the effective date of the new statute. The fund shall serve the purpose of securing and holding the contractor group members liable for funding of the amount necessary for well abandonment and facilities’ decommissioning.

In turn, the value of the abandonment fund shall be determined in accordance with an estimate of final decommissioning and abandonment costs. For this purpose, the provisional abandonment plan shall contain a forecast of the funds needed for its implementation, including a detailed cost breakdown for well abandonment and decommissioning of facilities. This forecast shall be updated regularly, prior to being finalized in the definitive abandonment plan to be submitted prior to commencement of decommissioning and abandonment operations. From a technical standpoint, the Presidential Decree establishes rigorous, objective, but at the same time flexible rules and procedures which ensure that wells and oil and gas facilities are abandoned and decommissioned without economic and social constraints. Learning from past experience and ongoing regulatory discussions in other oil producing regions, it foresees the definitive decommissioning of facilities and plugging and abandonment of wells with a view to ensuring their integrity, and safeguarding the safety of local communities in the areas where petroleum operations were previously conducted, notably in terms of navigation, fishing, movement of persons and other activities.

The statute also seeks to encourage the development and use of new technologies for well abandonment and decommissioning of facilities, provided they are aligned with environmental conservation principles, cost reduction objectives, and in compliance with international oilfield industry rules and practices. To harmonize the approach to decommissioning and abandonment (and thus hopefully streamlining review and approvals) the definitive decommissioning plan shall follow the procedures and model form included as an Annex to the presidential decree, which allows for the proposals to include the total or partial decommissioning facilities, if so justifiable and aligned with the overarching principles of the statute.

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Finally, the new regulations also include rules for situations where the operations and facilities are transferred to a different entity, and also for handover of facilities and operations.

If the contractor group members are replaced by new members, the new entities shall be responsible for the abandonment and decommissioning of wells and facilities. For such purpose the statute includes clear rules on the handover of facilities, inspection and audit, establishing, notably, that an inspection be carried out to ensure that decommissioning and abandonment has been performed in compliance with the approved plan, following which the regulator shall issue a certificate of completion of the works and release of liability according to a form attached as an annex to the statute. Additionally, there are requirements for continued monitoring after conclusion of the works.

In this situation of take over of operations and facilities, which is one of the most complex issues that, for instance, the UK and Australia are currently being faced with, the new Angolan regulations establish that the new contractor group entities shall be responsible for funding the abandonment costs, clarifying that if the funds are insufficient to cover the costs the liability for providing additional funds lies with the contractor group members, if such costs can be recovered, in accordance with their respective participating interests, and the Angolan authorities shall be released from all such liability. If the costs cannot be recovered, the contractor group entities shall be required to agree with the authorities on the recovery or deductibility of such additional costs.

What does the future hold?

The new Angolan decommissioning and abandonment framework is a significant improvement, bringing added certainty and clearer rules in an area that has become critical in recent years, while previously being devoid of adequate provisions, mechanisms and procedures. This has been welcomed by the industry as the existence of a clear regime covering abandonment and decommissioning operations has been one of the major demands of the IOCs in recent years, mainly due to the proliferation of maturing fields in Angola.

This said, there are a number of matters that the regulations do not cover, and that will need to be addressed sooner or later. One such area is how to deal with integrated upstream, midstream and downstream projects, since the new rules only apply to onshore and offshore upstream operations. Decommissioning and abandonment is a complex area, where technical, commercial and legal aspects need to be considered together, and where solutions are often driven by new engineering developments. Only the future will tell if the new regulations approved by Angola indeed have the necessary clarity and flexibility to allow the country's depleted fields to be definitively shut down in a manner that is satisfactory to all stakeholders. 

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