

THE  
OIL AND GAS  
LAW REVIEW

EIGHTH EDITION

Editor  
Christopher B Strong

THE LAWREVIEWS

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This article was first published in October 2020  
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Published in the United Kingdom  
by Law Business Research Ltd, London  
Meridian House, 34–35 Farringdon Street, London, EC4A 4HL, UK  
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ISBN 978-1-83862-482-8

Printed in Great Britain by  
Encompass Print Solutions, Derbyshire  
Tel: 0844 2480 112

# ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

AB & DAVID

ALLIANI & BRUZZON

AMERELLER LEGAL CONSULTANTS

ASHURST

BAROUDI & ASSOCIATES

BIRD & BIRD LLP

CUATRECASAS

DLA PIPER WEISS-TESSBACH GMBH

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# PREFACE

International oil and gas law is a fascinating field, sitting at an intersection of law, politics and business. Practitioners in this field must be familiar not only with international norms and practices, but also local legal and regulatory requirements that can vary substantially from jurisdiction to jurisdiction. The task can be daunting, especially in the context of fast-paced transactions or urgent legal or operational issues.

*The Oil and Gas Law Review* is intended to serve as a starting point for practitioners in gaining an understanding of the key legal requirements in the jurisdictions in which they may be advising clients on transactional and operational matters. The thinking behind the subtopics it covers has been to try to answer those questions that come up most frequently when dealing with a new or unfamiliar jurisdiction. Although not a substitute for detailed local law advice, the hope is that it will nevertheless serve as a reference guide and point users in the right direction when considering local legal issues.

I would like to thank the many experts who contributed to this volume. Without their substantial efforts, a work such as this would not be possible. Thanks also to the editors and publishers of *The Oil and Gas Law Review* for having the vision to publish a volume such as this and for their efforts in making it such a success.

**Christopher B Strong**

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London

October 2020

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# NORWAY

*Yngve Bustnesli*<sup>1</sup>

## I INTRODUCTION

Production of oil and gas on the Norwegian continental shelf (NCS) commenced in the 1970s following the discovery of the Ekofisk field. In the subsequent years, several additional large discoveries were made, and these fields have been, and still are, very important to the development of the activities on the NCS, also enabling the tie-in of a number of smaller fields. The Norwegian government has over the past 20 years introduced various adjustments in the legal (including fiscal) regime to attract new players to the NCS, and today about 40 foreign and Norwegian companies are active on the NCS.

The petroleum resources are vested in the Norwegian state, and a sophisticated licensing system with mandatory participation in an unincorporated joint venture with standard joint operating agreement and accounting agreement enable private and state-owned companies to explore, develop and produce petroleum in accordance with the principles laid down in licences and applicable acts and regulations. The main principle of Norway's management of its petroleum resources is that exploration, development and production must be carried out in a prudent manner with the aim to maximise value creation for the society, and that revenues must accrue to the Norwegian state and thus benefit society as a whole. In 2019, 57 exploration wells were spudded on the NCS and 17 discoveries were made. Most of the new discoveries are small and near existing or planned infrastructure. A total of 87 fields were in production while 13 fields were under development by the end of 2019. In addition, seven plans for new developments (PDOs) were submitted to the authorities during 2019.

In 2019, the total production of oil and gas (condensate and natural liquid gas included) reached approximately 214 million standard cubic metres (Sm<sup>3</sup>) of marketable petroleum. This is a minor decrease compared to 2018. The Norwegian Petroleum Directorate (NPD) estimates that the overall production from the NCS will increase slightly again during the period 2020–2023. The highest increase in production is expected in 2020, as a consequence of the major Johan Sverdrup field's commencement of production. For more information about the Johan Sverdrup field, see Section IX.

Norway supplies about 2 per cent of the global oil consumption. Gas production remained high in 2019, at about the same level as in 2018. Gas sales totalled 114 billion Sm<sup>3</sup> in 2019 and natural gas accounted for almost 50 per cent of total production by oil equivalents. The NPD's estimate for total proven and unproven petroleum resources on the NCS is about 15.7 billion Sm<sup>3</sup> of oil equivalents. Of this, approximately 45 per cent has been sold and delivered.

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<sup>1</sup> Yngve Bustnesli is a partner at Kvale Advokatfirma DA.

Norway is Europe's second-largest oil producer (after Russia), the world's third-largest natural gas exporter and an important supplier of both oil and natural gas to other European countries. The petroleum industry is by far the largest industry in Norway. Numbers published by Norwegian Petroleum show that total oil and gas investments on the NCS, excluding exploration, totalled around 140 billion Norwegian kroner in 2019.

The oil and gas sector is Norway's largest measured in terms of value added, government revenues, investment and export value. In 2019, the export value of crude oil, condensate and natural gas was about 424 billion Norwegian kroner, which amounts to approximately 47 per cent of the total value of Norway's exports of goods. This makes oil and gas the most important export contributor in the Norwegian economy. The Norwegian government's total net cash flow from petroleum activities, including the dividend from Equinor (formerly Statoil) and various fees, is estimated to be approximately 238 billion Norwegian kroner in 2019. This represents a slight decrease in revenues compared to 2018, mainly because of lower oil and gas prices.<sup>2</sup> The state's income from the petroleum sector is transferred to a separate fund, the Government Pension Fund – Global. By 20 August 2020, the fund was valued at approximately 10,200 billion Norwegian kroner.<sup>3</sup>

## II LEGAL AND REGULATORY FRAMEWORK

The main statute relevant for petroleum activities is the Petroleum Act No. 72 of 29 November 1996 (the Petroleum Act) while the more detailed rules are set out in various regulations, including the following pertaining to resource management:

- a* the Petroleum Regulations No. 653 of 27 June 1997 (the Petroleum Regulations);
- b* the Resource Management Regulations No. 749 of 18 June 2001;
- c* the Regulations Relating to the Use of Facilities by Others No. 1625 of 20 December 2005; and
- d* the Regulations Relating to the Stipulation of Tariffs, etc. No. 1724 for Certain Facilities of 20 December 2002 (the Tariff Regulations).

In addition, there are various regulations relating to health, safety and environment, elaborated on in Section VII.

The Petroleum Taxation Act No. 35 of 13 June 1975 (the Petroleum Taxation Act) is also considered a core statute governing taxation of exploration, production and extraction of sub-sea petroleum deposits. Four of the most relevant appurtenant regulations are:

- a* the Regulations on Petroleum Taxation No. 316 of 30 April 1993;
- b* the Regulations Relating to Consent to the Transfer of Licence and Ownership Interests According to the Petroleum Taxation Act Section 10 of 1 July 2009 No. 956;
- c* the Regulations Relating to Taxation on Rental of Moveable Production Facilities No. 819 of 18 August 1998; and
- d* the Regulations for Determining the Norm Price No. 5 of 25 June 1976 (the Norm Price Regulations).

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2 Sources: Resource and production numbers are quoted from the website for Norwegian Petroleum ([www.norskpetroleum.no](http://www.norskpetroleum.no)), the Norwegian Petroleum Directorate ([www.npd.no](http://www.npd.no)) and Statistics Norway ([www.ssb.no](http://www.ssb.no)).

3 Source: Norges Bank – Investment Management, see [www.nbim.no](http://www.nbim.no).

**i Domestic oil and gas legislation**

The Petroleum Act provides the general legal basis for petroleum activities on the NCS. According to the Act and the Petroleum Regulations, licences can be awarded for exploration, production and transport of petroleum, meaning that the proprietary right to the petroleum deposits on the NCS is vested in the state. Official approvals and permits are necessary in all phases of the petroleum activities, from award of exploration and production licences, in connection with the acquisition of seismic data and exploration drilling, to plans for development and operation, production and decommissioning.

Prior to awarding production licences, an impact assessment must be carried out to evaluate factors such as the economic and social effects, and the environmental impact the activity could have for other industries and the adjacent districts in the relevant areas. The impact assessment and opening of new areas are governed by Chapter 3 of the Petroleum Act and Chapter 2a of the Petroleum Regulations.

Production licences are awarded through licensing rounds announced by the Ministry of Petroleum and Energy (MPE). The announcement is made official on, inter alia, the NPD's website ([www.npd.no](http://www.npd.no)).

The production licence regulates the rights and obligations of the companies in relation to the Norwegian state. The licence supplements the requirements in the Petroleum Act and stipulates detailed terms and conditions. The licensees become the owners of the petroleum that is produced. More detailed provisions regarding the licensing regime and production licences can be found in Chapter 3 of the Petroleum Act and the Petroleum Regulations.

If the companies find it commercially viable to develop a field, they are required to carry out prudent development and operation of proven petroleum deposits. When a new deposit is to be developed, the company must submit a plan for development and operation to the MPE for approval. An important part of that plan is to perform an impact assessment that is submitted for consultation to various bodies that could be affected by the specific field development. Development and operation is governed in more detail by Chapter 4 of the Petroleum Act and the Petroleum Regulations.

As a general rule, the Petroleum Act requires licensees to submit a decommissioning plan to the MPE two to five years before the licence expires or is relinquished, or before the use of a facility ceases. Decommissioning or disposal of facilities is governed by Chapter 5 of the Petroleum Act and Chapter 6 of the Petroleum Regulations.

Liability for damages resulting from pollution is governed by Chapter 7 of the Petroleum Act. The licensees are responsible for such damage without regard to fault.

Safety aspects associated with the petroleum activities are governed by Chapters 9 and 10 of the Petroleum Act, with appurtenant health, safety and environment (HSE) regulations. The petroleum activities shall be conducted in a prudent manner to ensure that a high level of HSE can be maintained and developed throughout all phases, in line with the continuous technological and organisational development.

The Norwegian state participates directly in the petroleum activities through the state's direct financial interest (SDFI) managed by the wholly state-owned company Petoro AS (Petoro). Petoro does not hold operatorships. Detailed rules governing the management of the SDFI are laid out in the Petroleum Act Chapter 11.

## **ii Regulation**

The main governmental offices responsible for petroleum activities on the NCS are the MPE, the Ministry of Finance (MoF), the Ministry of Labour and Social Affairs, the Ministry of Climate and Environment, and the Ministry of Trade, Industry and Fisheries.

The MPE has the overarching responsibility for managing the petroleum resources and is also responsible for the state-owned companies Petoro and Gassco AS. Gassco is the operator for the integrated pipeline system for transporting gas from the NCS to other European countries. The NPD is subordinated to the MPE and its paramount objective is to make sure that the resource management of the Norwegian petroleum resources are conducted in the best possible manner.

The MoF has the main responsibility of ensuring that the state collects the applicable taxes and fees from the petroleum activities, including corporate tax, special tax, CO<sub>2</sub> tax and NO<sub>x</sub> tax. The Petroleum Taxation Office is part of the Norwegian Tax Administration, reporting directly to the MoF, and is responsible for ensuring correct levying and payment of taxes and fees adopted by the political authorities.

Moreover, the Petroleum Safety Authority (PSA), under the Ministry of Labour and Social Affairs, has the regulatory responsibility for technical and operational safety, including emergency preparedness and working environment in petroleum activities.

The Norwegian Environment Agency, under the Ministry of Climate and Environment, is responsible for all environmental issues pertaining to the petroleum activities, such as granting the requested permissions to pollute.

Another governmental body involved is the Norwegian Coastal Administration, under the Ministry of Transport, and is responsible for the state's oil spill preparedness.

Finally, the Norwegian Maritime Authority (NMA) is the administrative and supervisory authority in matters related to safety of life, health, material values and the environment on maritime vessels involved in the petroleum activities. The NMA is, among others, issuing certificates/letters of compliance to mobile drilling units used in petroleum activities, and is also following up on whether such units are in compliance with the applicable maritime regulations. The NMA has entered into a cooperation agreement with the PSA, dividing responsibility as to the follow-up of mobile offshore units. The NMA is subordinate to the Ministry of Transport.

## **iii Treaties**

Norway is a contracting state to both the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. Further, Norway is a party to bilateral investment protection treaties entered into with different states regarding mutual promotion and protection of investments. The Agreement on the European Economic Area (EEA) and the TRIMs (Trade-Related Investment Measures), TRIPS (Trade-Related Aspects of Intellectual Property Rights) and GATS (General Agreement on Trade in Services) agreements (treaties of the World Trade Organization), to which Norway is a party, are considered bilateral investment treaties. An example of a multilateral treaty ratified by Norway is the cooperation agreement between Member States of the European Free Trade Association and the European Investment Bank.

Double taxation relief is available in accordance with double taxation treaties (DTTs), entered into between Norway and several foreign states. The DTTs are mostly based on

various editions of the OECD Model Tax Convention on Income and on Capital, or the UN Model Tax Convention in case of DTTs entered into between Norway and typical developing countries.

Since 1992, Norway has been practising what is referred to as the 'credit system'. Under the credit system, income derived from a foreign source is considered liable to tax in Norway, but the taxpayer is credited a tax relief based on taxes paid in the state of source. Credit is normally limited to the rate of Norwegian tax levied on the foreign income. Following the introduction of the credit system, many of the older double tax treaties that have been based on the exemption method have either been or are currently under renegotiation.

Under Norwegian domestic tax law, relief from double taxation is either granted by way of a double tax credit or by deduction of the foreign tax from the Norwegian corporate tax basis.

### III LICENSING

There are two distinct licences that the MPE may grant: exploration licences and production licences. In addition, a specific licence to install and operate pipelines is also granted by the MPE. The exploration licence is not exclusive and does not give a preferential right if a subsequent production licence is granted. A production licence is, on the other hand, exclusive, meaning the licensees are given a sole right to conduct surveys, exploration and production within the geographical area defined by the production licence. The award of a production licence is based upon the applicant's technical expertise, financial strength, geological understanding and experience on the NCS or similar areas.

Exploration licences are granted for a period of three calendar years unless otherwise specifically stipulated in the licence. Production licences are granted for an initial period of up to 10 years, and if the licence is granted for a shorter period of time, the MPE may subsequently extend the licence period within the 10-year limit. When the licensees have fulfilled the mandatory work obligations set out in the production licence, they may require a further extension of the production licence. A possible extension period is stipulated in the applicable production licence and shall as a general rule be up to 30 years but may under specific circumstances be up to 50 years.

Production licences on the NCS are awarded following two different licensing rounds; areas regarded as mature are subject to an annual simplified licensing round referred to as awards in predefined areas (APA). On the other hand, areas that are not regarded as mature are subject to ordinary licensing rounds traditionally held every second year. Companies can apply individually or as a group. Based on the applications submitted, the production licences are awarded to a group of companies forming a joint venture on the basis of relevant, objective and non-discriminatory announced criteria. One of the licensees is further appointed as an operator.

Production licences can also be obtained through direct or indirect transfer of participating interests. Such transactions require the consent of both the MPE and the MoF (see the Petroleum Act Sections 10–12 and the Petroleum Taxation Act Section 10).

#### **IV PRODUCTION RESTRICTIONS**

Pursuant to the Petroleum Act, the production of petroleum shall be conducted in the most cost-effective manner. The production schedule is subject to the prior approval of the MPE. There are, as a starting point, no restrictions on production entitlements or rights related to exports of oil and gas. The government is, however, provided with some special legal tools that may be used in times of crisis. First, if necessary owing to important interests of society, the government may implement production schedules other than those stipulated for one or several petroleum deposits and also decide to reduce the production level from applicable fields. Due to the current low oil prices and the covid-19 pandemic, the Norwegian government followed up the production cuts introduced by OPEC (as well as Russia and other major oil producing countries) by reducing the production from Norwegian oil fields by almost 10 per cent during the period from June to December 2020. Second, in the event of national or worldwide difficulties in the supply of oil and gas, the licensees may be required to make deliveries of their production to cover national requirements and to provide transport to Norway. Furthermore, in the event or threat of war or other extraordinary crisis, the licensees may be required to place petroleum at the disposal of Norwegian authorities. The potential legal restrictions listed above are all to be considered as narrow safety nets, implying that the potential restrictions on production entitlements have only been utilised a few times since commencement of petroleum activities on the NCS.

The Norwegian Petroleum Price Council is, according to the Petroleum Taxation Act Section 4, responsible for setting the norm prices used to calculate the taxable income for the oil companies operating on the NCS. Determination of norm prices is based on the principle that it should reflect the price that could have been achieved between independent parties. The procedure for determining norm prices is governed by the Norm Price Regulations.

Where the Council does not find it reasonable to set norm prices, the actual price achieved will be used as the applicable tax reference price. Note that the norm price system is not applicable to taxation of dry gas sales. Such sales are, insofar as the price reflects the market, value taxed on the basis of the actual price achieved.

#### **V ASSIGNMENTS OF INTERESTS**

Transfer of assets in production licences is subject to the MPE's prior consent (see the Petroleum Act Section 10-12). The requirement also applies to the purchase of at least one-third of the shares in a company holding a production licence or if the purchaser passes the thresholds of one half or two-thirds control of the company holding the production licence. Although the above thresholds are not exceeded, shareholder rights such as veto rights or the right to consent to certain activities under the Norwegian licence could easily trigger the need for consent under Section 10-12. A corresponding consent related to the tax consequences must, according to the Petroleum Taxation Act, also be obtained from the MoF. There are no requirements as to any specific consideration being made. The consequence of not obtaining a required consent under the Petroleum Act Section 10-12 is that the transaction may not be completed.

It is not possible to provide an exact estimate of the time frame for obtaining approval from the MPE, as it may vary from days to many months. Factors that may influence the process are, inter alia, whether the assignee is a company already established on the NCS,

the complexity of the transaction and the financial situation of the assignee. In the majority of the transactions on the NCS, it takes more than three weeks to receive approval from the MPE.

If transferring licences in the development or production phase, the assignor is exposed to a potential secondary financial liability for decommissioning costs. The liability is limited to the assignor's participating interest for installations existing at the field at the date the transfer is registered in the Norwegian Petroleum Register. For more information, see Section VII.

The Norwegian state has, through the SDFI, a pre-emption right in all production licences being transferred on the NCS. The pre-emption right is exercised through the wholly state-owned company, Petoro. The pre-emption right does not apply to transactions involving transfer of shares. Up to now, the pre-emption right has never been exercised, but for each transfer, Petoro will, within 40 days after being notified about the transfer, evaluate whether to exercise the pre-emption right.

## VI TAX

### i Overview

Petroleum activities on the NCS are governed by the Petroleum Taxation Act. The Act levies a special tax of 56 per cent in addition to the ordinary corporate tax rate of 22 per cent, leaving the marginal tax rate at 78 per cent. However, there is an uplift allowance when calculating the special tax. The uplift equals 5.2 per cent per year over a four-year period on capital investments, in total 20.8 per cent. The uplift was introduced to ensure a regular rate on return on the capital investments.

All exploration costs may be deducted. For production facilities and pipelines governed by the Petroleum Act, a linear depreciation rate of 16.66 per cent per year is granted.

Oil and gas companies operating on the NCS with no taxable surplus may carry forward their losses and their uplift allowance included interest. The interest rate is set annually by the MoF. The right to carry forward such losses is for an indefinite time period.

Consolidation between the different fields on the NCS is permitted, and the companies may use taxable surplus obtained from one field and settle this against losses incurred from activities on another field on the NCS.

Owing to a special provision in the Petroleum Taxation Act, companies that are in a tax loss position may annually claim a cash reimbursement from the state equivalent to the fiscal value (78 per cent) of exploration costs that the company has carried during the income tax year. The legislation also allows the companies to pledge or sell such reimbursement claims against the state. In all, the right to claim reimbursement of exploration costs and the right to carry forward losses equivalent to the fiscal value is beneficial for operating companies without positive taxable income and that are in a start-up phase.

Other taxes and fees related to activities on the NCS include the CO<sub>2</sub> tax, which for 2020 is 1.15 Norwegian kroner per litre of produced petroleum, the NO<sub>x</sub> tax and the area fee.

The MoF shall provide its consent to any transfer of licences or participating interests in licences governed by the scope of the Petroleum Act Section 10-12. The main objective is to ensure a neutral tax effect of the transactions.

**ii Temporary amendments to the Petroleum Taxation Act because of the covid-19 pandemic**

The Norwegian Parliament has implemented temporary amendments to the Petroleum Taxation Act to improve the liquidity and increase the investment level until 2024 because of the covid-19 situation and its negative impact on the oil and gas industry.

Normally, investments in production facilities and pipeline are depreciated over a period of 6 years (16.66 per cent yearly). The amendments introduce a right to an immediate deduction of the investment costs in the special tax base (56 per cent special tax) for investments in the income years 2020 and 2021. Furthermore, the amendments implement an additional uplift of 10 per cent on costs incurred for the income years 2020 and 2021.

The right to obtain an immediate deduction of the investment costs and an additional 10 per cent uplift also apply to deduction of costs incurred in acquiring operating assets covered by defined plans for development and operation of fields (PDO) or plans for installation and operation (PIO) provided that an application is filed before 1 January 2022 and approved by the Ministry of Petroleum and Energy prior to 1 January 2023. The changes only apply to costs in the year of production or operation and such costs must in addition have been incurred prior to 31 December 2024.

The amendments to the Petroleum Taxation Act also include a right to claim the tax value of losses and unused uplift incurred in 2020 and 2021 paid by the state. The tax value includes both ordinary tax and the special petroleum tax. This will improve the liquidity to companies suffering losses or being in a loss position.

The temporary amendments will only have limited impact on existing fields on the NCS.

## **VII ENVIRONMENTAL IMPACT, HSE AND DECOMMISSIONING**

The Norwegian Environment Agency manages and enforces the Pollution Control Act of 13 March 1981 No. 6, the Product Control Act of 11 June 1976 No. 79 and the Greenhouse Emission Trading Act of 17 December 2004 No. 99, and is responsible for granting permits, establishing requirements and setting emission limits. The overarching goal of the aforementioned acts is to protect the environment against pollution, including pollution from the petroleum industry. In addition, various EU directives related to the environment have also been implemented in Norwegian law and must in this case be complied with when conducting offshore petroleum activities covered by the relevant legislation. Breach of the regulations enforced by the Norwegian Environment Agency may lead to administrative and criminal sanctions.

The PSA is the administrative body responsible for technical and operational safety, and the working environment related to offshore and onshore activities covered by the Petroleum Act. Said responsibility covers all phases of the relevant activities, including planning and design, construction and operation, and decommissioning and removal. All licensees conducting activities on the NCS shall have a management system that the PSA finds to be in compliance with the HSE regulations, and breach of the applicable regulations may be subject to administrative and criminal sanctions.

The main HSE requirements applicable to subsea and onshore activities forming an integrated part of the offshore petroleum production are set out in the following regulations:

- a* the Framework Regulations of 12 February 2010 No. 158;
- b* the Management Regulations of 29 April 2010 No. 611;

- c the Facilities Regulations of 29 April 2010 No. 634;
- d the Activities Regulations of 29 April 2010 No. 613; and
- e the Technical and Operational Regulations of 29 April 2010 No. 612.

As a general rule, all mobile offshore drilling facilities, floating production, storage and offloading units (FPSOs), accommodation units and well intervention units registered in a national ship register are required to obtain an acknowledgment of compliance (AoC) before commencement of petroleum activities. An exception is applicable to mobile facilities where the operator itself is responsible for the operations. The AoC is provided by the PSA and expresses the authority's confidence that petroleum activities can be carried out using the facility within the framework of the regulations. An applicant can either be the owner of the facility or a party in charge of the day-to-day activities of the facility. After receiving an AoC, the mobile offshore facility still needs to comply with mandatory requirements in applicable acts and regulations.

The main legal framework relating to decommissioning of oil and gas facilities and pipelines is included in the Petroleum Act Chapter 5 and the Petroleum Regulations Chapter 6. The licensees are obliged to submit a decommissioning plan to the MPE prior to expiry or surrender of a production licence or a specific licence referring to installation and operation of facilities, alternatively before the use of a facility is permanently terminated. The plan shall contain proposals for continued production or shutdown of production and disposal of facilities. The MPE renders a final decision relating to the content of and the time limit for implementation of the decommissioning plan. The decision shall, *inter alia*, be based on technical, safety, environmental and economic aspects as well as considerations to other users of the sea.

In addition to national regulations, the decommissioning plan must take into consideration various requirements undertaken in international treaties and conventions. This particularly relates to the OSPAR Decision 98/3 on the Disposal of Disused Offshore Installations, the Guidelines of the International Maritime Organization (IMO) and the United Nations Convention on the Law of the Sea (UNCLOS).

The MPE is entitled to request a parental guarantee or any other security from the licensee at any phase of the petroleum activities, which also means that specific security may be requested in connection with the conclusion of decommissioning activities. In practice, the MPE has until now only requested a standard parental guarantee when the company is pre-qualified as a licensee or is being awarded its first production licence. However, a guarantee or equivalent security to ensure fulfilment of all regulatory requirements is required in respect of an application for injection and storage of CO<sub>2</sub> in a subsea reservoir on the NCS. The financial guarantee shall be valid and effective when injection starts.

If a licence or a participating interest thereof has been transferred, the assignor shall (*inter partes*) be secondarily liable for financial obligations towards the assignee and the remaining licensees for the costs of carrying out the decision relating to disposal (see the Petroleum Act Section 5-3 and the Petroleum Regulations, Section 45a).

The MPE has, through a letter dated 8 November 2016 to the Norwegian Oil and Gas Association, announced that the secondary financial liability may also apply to indirect transfer of licences (share sales). The approach is that the MPE in connection with providing consent to the transfer (Petroleum Act Sections 10–12) shall consider whether to attach a condition stating that the assignor shall undertake a secondary financial liability for decommissioning costs related to his or her participating interests for installations existing at the field at the

time the transfer is registered in the Petroleum Register. To ensure fulfilment of this potential secondary financial liability, the MPE may request that also the ultimate parent company of the assignor undertake the same obligation through a standard guarantee with both the Norwegian state and the licensees as the beneficiaries. If the requested standard guarantee for decommissioning costs is not provided, the original parental guarantee will remain in force until the alternative financial liability is no longer applicable. The new practice has been in place since September 2017.

Normally, the assignor will request the assignee to provide a parental guarantee or bank guarantee to make sure that the assignor is indemnified in the event of being held liable for any upcoming decommissioning costs.

## VIII FOREIGN INVESTMENT CONSIDERATIONS

### **i Establishment**

The MPE may grant an exploration licence to a body corporate irrespective of whether the company is domiciled or registered in Norway. Exploration licences may also be granted to physical persons domiciled in a state within the EEA. Production licences may be granted to a body corporate established in conformity with Norwegian legislation and registered in the Norwegian Register of Business Enterprises, and to physical persons domiciled within the area of the EEA. Pursuant to the EEA Agreement, companies applying for a production licence may also be established or domiciled in an EEA state.

According to the Petroleum Act, the licensees shall ensure that the activity on the NCS can be carried out prudently and in a manner that safeguards good resource management, health, safety and the environment. To ensure compliance with these requirements the MPE may, to the extent it is deemed necessary in relation to the scope of the licensee's activity, set special requirements regarding the licensee's organisation in Norway. The ministry may also, if indicated by the consideration for prudent resource management or health, safety and the environment, order the licensee to use specific bases. In practice, more or less all companies being awarded a production licence have been domiciled in Norway and registered as a company with limited liability within a reasonable period of time after the award.

When urgent, law firms will normally be able to incorporate and register a new company in the Register of Business Enterprises within 24 hours as long as all board members have a Norwegian identity number.

The minimum share capital is 30,000 Norwegian kroner for a private limited liability company and 1 million Norwegian kroner for a public limited liability company. At least 50 per cent of the board members in the company have to be EEA citizens residing in an EEA country.

The most common obstacle in incorporating and quickly registering a new company in Norway is obtaining Norwegian identity numbers for foreign board members who have not previously held any corporate positions in Norway. Obtaining these identity numbers normally takes two weeks.

### **ii Capital, labour and content restrictions**

Except for common restrictions on the movement of physical bank notes, there are no particular restrictions on the movement of capital or access to foreign exchange. Note, however, that all cross-border transactions are reported to a central register.

In the private sector, hiring of employees is generally based on contractual freedom between the employer and the employee. However, certain details concerning the hiring process, such as the material content of the employment contract and term of notice, are regulated by the Norwegian Working Environment Act.

The employment may in addition to the Working Environment Act be regulated by collective bargaining agreements, depending on whether the company is bound by one or more such agreements. Several Norwegian collective bargaining agreements are applicable to the oil and gas sector, inter alia, pertaining to salary and working conditions. Regarding work permits, the Norwegian government differentiates between foreign workers from EEA countries and workers from other countries. Workers from EEA countries must register themselves to be able to work in Norway. Workers from other countries, however, will have to be categorised as skilled workers by the Norwegian Directorate of Immigrants to be granted a work permit. To qualify as a skilled worker, the employee must either have completed vocational training at upper secondary school level for at least three years (and there must be a corresponding vocational training programme in Norway), or the employee must have obtained a degree from a university or university college (e.g., a bachelor's degree as an engineer), or have qualifications obtained through work experience, if relevant in combination with courses, etc.

### **iii Anti-corruption**

Corruption in general is criminalised in the Norwegian Penal Code and is defined as to request, receive, accept, give or offer an improper advantage to someone in connection with their position, office or assignment.

Public bodies and private entities may be found guilty of corruption if an employee has violated the Norwegian Penal Code while executing work for the employer.

In terms of what behaviour the code prohibits, the term 'advantage' is far-reaching, and may refer to any kind of payment, favour, commitment, etc. Furthermore, the Code does not require that the advantage has had any influence on any decisions or policies, or had any other negative effect in practice. Therefore, it is not necessary to prove that the entity or individual charged has gained from the corruption. The advantage need not be of an economic nature.

It is then the term 'improper' that defines which advantages amount to corruption. Admittedly the term is rather vague, and whether an advantage is defined as improper depends on the circumstances of the case. Public bodies and officials acting on behalf of public bodies will (as opposed to private individuals and undertakings) generally be subject to a stricter norm when assessing whether an advantage conferred or obtained is to be regarded as improper.

Although not characterised as corruption, the Penal Code criminalises 'trading in influence'. Trading in influence refers to situations where a person gives or offers a middleman an improper advantage in return for exercising influence on the conduct of any position, office or assignment. If the middleman's relationship with the giver and the intention behind attempting to exercise influence has been concealed, the behaviour is likely to be caught by the Penal Code.

To ensure that no improper payments take place in the Norwegian petroleum sector, all licensees are obliged to report to the authorities on revenues from the petroleum activities, see Petroleum Regulations Section 50b.

## IX CURRENT DEVELOPMENTS

### i Highlights of petroleum activities

The activity level on the NCS has increased since the dramatic drop in oil prices in 2014. Fifty-seven exploration wells were spudded on the NCS and 17 discoveries made during 2019. Thirteen fields were under development, and seven new field development plans were submitted to the authorities in 2019.<sup>4</sup>

The development of the Equinor-operated Johan Sverdrup field stands out as the project people in the industry are most enthusiastic about. The oil and gas production capacity for the full field is expected to be in the range of approximately 690,000 barrels of oil equivalent per day, and the operator expects that the total production from the field will be 2.7 billion barrels. The field is developed in different phases, and commencement of production for the phase 1 development took place in October 2019. The partners submitted the PDO for the second phase of the development in the end of August 2018, and phase 2 is currently scheduled to come on stream in the second half of 2022. The field is expected to be producing for approximately 50 years. This makes Johan Sverdrup one of the five largest fields ever discovered on the NCS.

One of the other giant development projects on the NCS is the Johan Castberg field located in the Barents Sea. The field, discovered in 2011, is located 110 kilometres north of the Snøhvit field, and proven resources are estimated to be between 450 to 650 million barrels of oil. The concept is an FPSO with additional subsea features constructed at the Sembcorp Marine shipyard in Singapore. The PDO was approved by the authorities in June 2018 with planned commencement of production during the fourth quarter in 2022. The covid-19 situation in addition to welding issues related to the hull of the FPSO and fault with the design of software for measuring hull fatigue has, however, delayed the expected commencement of production until the second half of 2023. The field is scheduled to be producing for 30 years.

It is expected that major field developments such as Johan Sverdrup and Johan Castberg, many small and medium-sized discoveries in close proximity to existing infrastructure will ensure that the NCS continues to be one of the most prosperous petroleum provinces in the years to come.

### ii Digitalisation contributing to cost-cutting

After the significant drop in oil prices in 2014, various cost-cutting measures have been implemented to ensure that it is still profitable to conduct petroleum activities on the NCS. The Norwegian oil and gas industry has a good track record in implementing new technology. A recent trend contributing to lower costs is an operator-driven digitalisation initiative with more data sharing through digital cloud-based solution replicating real-life scenarios with virtual 3D operations' simulations, data analytics for condition-based equipment maintenance and artificial intelligence involving machine learning to better understand and interpret data for more effective decision making. One of the projects benefitting from the digitalisation trend is the major Johan Sverdrup field development. The operator, Equinor, has developed

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4 Sources: The Norwegian Petroleum Directorate ([www.npd.no](http://www.npd.no)) and Norwegian Petroleum ([www.norskipetroleum.no](http://www.norskipetroleum.no)).

digital twins of the field's four platforms providing a unique overview of all parts of the platforms and enabling more realistic surveillance and training that in turn contribute to more efficient and safe operations.

The Norwegian industry's increased focus on digitalisation is expected to be one of the most important factors contributing to the NCS, strengthening its competitiveness in the years to come.

### **iii Strong focus on Norwegian CCS projects**

Norway has, during many years, taken an important role in implementing measures reducing the carbon footprint from the petroleum activities, and is now also in the front seat in the process of developing large-scale carbon capture and storage (CCS) facilities.

On 15 May 2020, the Ministry of Petroleum and Energy announced that they had received and started the assessment of the development plan for the Northern Lights CO<sub>2</sub> storage project.

The Northern Lights project is a partnership between Equinor, Shell and Total and constitutes the transport and storage part of the Norwegian demonstration project for full-scale CO<sub>2</sub> capture and storage. The Northern Lights partnership estimate that the first part of the project has an investment cost of about 6.9 billion Norwegian kroner.

This is the first development plan submitted in accordance with the CO<sub>2</sub> storage regulations of 5 December 2014, and If the Norwegian government makes an investment decision for the demonstration project, Northern Lights will receive CO<sub>2</sub> on ships at an onshore reception facility in Øygarden municipality. At the onshore reception facility, CO<sub>2</sub> must be stored intermittently before being pumped through a pipeline to an injection well on the seabed. From the well, CO<sub>2</sub> will be permanently stored in the Johansen and Cook formations, about 2,660 metres below the sea level in the North Sea.

A stepwise development of the project is planned. Phase 1 is planned with a capacity to store 1.5 million tonnes of CO<sub>2</sub> per year, and the total storage capacity for phase 1 is approximately 40 million tonnes of CO<sub>2</sub>. The facility will have an operating period of 25 years, and the construction period is planned to be completed in 2023/2024.

### **iv Increased use of third-party infrastructure**

Access to third-party infrastructure is governed by two different regulations. Access to the gas transportation network (Gassled) is governed by Regulation 20 December 2002 relating to the stipulation of tariffs for certain facilities (the Tariff Regulations). Third-party access to other offshore infrastructure is governed by Regulations 20 December 2005 relating to the use of facilities by others (TPA Regulations). The Tariff Regulations provides rules on regulated access with set tariffs, while access to infrastructure under the TPA Regulations is based on negotiated terms within set criteria. The aim of both regulations is to ensure efficient use of existing infrastructure on the NCS, and the overriding principle is that the owner shall be entitled to maximise profit through production and not in the transportation network and other infrastructure. The increased use of third-party facilities on the NCS is likely to give rise to more disputes related to the specific tariff level and other applicable terms and conditions under the TPA Regulations.

### **v Petroleum activities in proximity of the ice edge zone (Barents Sea)**

The Norwegian state has committed itself to not permitting petroleum activities on the 'ice edge zone' in the Barents Sea.

Up until now, the ice edge zone has been defined as the area where the average period of ocean ice during April is 30 per cent, but the Norwegian Parliament have earlier this year approved a new definition where the borderline is set to the area where the average period of ice during April is only 15 per cent. The previous borderline is therefore moved a bit further south. It is clearly very important for the Norwegian petroleum industry that none of the production licences awarded in the 23rd licensing round (Barents Sea south-east) are crossing the proposed borderline of the new ice edge zone. Petroleum activities are therefore likely to still be permitted in these production licences, which is an issue closely linked to the high-profile claim from environmental groups against the Norwegian state. The case is heading for the final round in the Norwegian Supreme Court, see further information below.

#### **vi Norwegian Supreme Court ruling in process**

The Norwegian Supreme Court is to rule on whether the award of production licences in the 23rd licensing round (Barents Sea south-east) is in breach of Article 112 of the Norwegian Constitution. The High Court stated in the judgment of 23 January 2020 that Article 112 of the Constitution provides individual rights to Norwegian citizens that may be tested before the courts, clarifying that it is the actual emissions in Norway caused by the petroleum activities that are vital when assessing a potential breach of Article 112. The court noted that it is highly uncertain whether granting of production licences also implies a later discovery of petroleum with commencement of production, and that the emissions caused by exploration activities are very limited.

When assessing potential environmental harmful effects of oil and gas production, consideration must be taken to all preventive measures being implemented. The High Court emphasised that the threshold for construing a breach of Article 112 is high, and that the courts should act with restraint when considering overruling decisions that are based on comprehensive assessments through political processes in the government and parliament. The High Court concluded that the award of production licences was not unconstitutional.

The High Court's decision was appealed, and the Supreme Court's Appeal Selection Committee decided, on 20 April 2020, that the appeal will be heard by a plenary session of the Supreme Court. This case will attract great public interest, and it is expected that the proceeding will take place before the end of 2020.

#### **vii Short-term market outlook – covid-19 pandemic**

The recent significant drop in oil prices and the uncertain market outlook because of the covid-19 pandemic have already led to several Norwegian offshore projects being suspended, reducing the expected investment level on the NCS in the coming year. Most of the ongoing projects are, however, said to be kept on track.

The covid-19 pandemic has triggered the Norwegian Parliament to implement various economic measures to stimulate the oil and gas activities on the NCS, including introducing temporary amendments to the Petroleum Taxation Act to improve the liquidity and increase the investment level until the end of 2024. For details on the latter, see Section VI.

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In his former position as a legal adviser at the Ministry of Petroleum and Energy, he participated, inter alia, in preparing the Petroleum Act with regulations and amendments to the joint venture agreements. Yngve also participated in the team working on the partial privatisation of Statoil and the establishment of the public corporations, Petoro and Gassco.

Yngve is a co-author of the standard textbook on Norwegian petroleum law, published in January 2010. He is also the author of the first Norwegian commentary (volumes 1 and 2) on legal sources applicable to the petroleum activities published in November 2013.

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ISBN 978-1-83862-482-8