

Chapter 31

Oil, gas and natural resources

1. General

Having in view Romania's accession to the European Union ("EU") in 2007, the Romanian authorities have taken important steps to align the legal framework to the EU legislative system. As a result of this process, since 2004 the regulations in the oil and gas sector were changed in order to provide a solid framework for the energy market and to reach a very important goal consisting in the privatization of oil and gas state companies.

Such privatization goal was partially implemented during 2004-2005, when the State divested large stakes of its participation in companies such as Petrom, Distrigaz Nord or Distrigaz Sud. The primary aim of such privatization is the opening and deregulation of the energy market in line with the EU requirements.

As regards the mineral resources field, Romania has undertaken far-reaching programs to restructure its mining sector prior to and after joining the European Union. One aspect of restructuring has been the closure of loss-making mines, which are often located in communities where the mining industry is the dominant employer, and the significant downsizing of the workforce. Mitigation efforts that were implemented at the time of mine closure are doubled by Romania's efforts to attract investors in the mining sector, able to provide adequate guarantees as regards the usage of best available and environmentally friendly technologies and the assistance of local communities in order to achieve sustainable development.

2. Main regulations

- Oil Law no. 238/2004 ("**Law no. 238/2004**"), as further amended;
- Gas Law no. 351/2004 ("**Law no. 351/2004**"), as further amended;
- Government Emergency Ordinance no. 34/2006 on award of public procurement contracts, public works concession contracts and public services concession contracts ("**GEO no. 34/2006**");
- Mining Law no. 85/2003 ("**Law no. 85/2003**"), as further amended.

3. Oil

3.1. Competent authority

The competent authority assigned to implement the regulations in the oil sector is the National Agency for Mineral Resources ("**ANRM**"), organized under Governmental subordination, having legal status, and *inter alia* the following powers:

- (i) managing State oil resources;
- (ii) concluding oil agreements;
- (iii) regulating the oil operations in accordance with the oil agreements, as well as with the available norms and technical instructions;
- (iv) receiving, checking and registering the data and information on oil resources, ensuring backup, systematization and capitalization of these resources;
- (v) setting the reference price for the oil extracted in Romania based on preliminary studies;
- (vi) elaborating and maintaining the Oil Record Book (record instrument containing all data on the legal regime of the surfaces related to the development and exploration perimeter, land property, topographic status of works related to the oil operations, the resources/reserves of oil and production, as well as data with respect to the limits of perimeters and oil operations related to prospecting and exploration phases);
- (vii) follow-up and monitoring of oil production for the purpose of royalties establishment.

3.2. Right of use and access to oil fields

In accordance with Law no. 238/2004, oil operations can be performed by Romanian or foreign legal entities only inside specific perimeters determined by ANRM.

The right of use over fields where oil operations take place may be achieved based on:

- (i) sale-purchase of the land and, if case may be of the accessory buildings, at a price to be agreed by parties;
- (ii) land exchange;
- (iii) lease of the land on determined periods;
- (iv) public utility expropriation;
- (v) land concession;
- (vi) associations between the owner of the land and the title holder of the license.

The right of access over such perimeters is different, depending on the type of operations that take place, i.e. (i) permanent right of access, when a day to day verification of the main pipe lines perimeter is necessary and (ii) occasional right of access, for occasional works due to damages and scheduled repairs. In such situations, the landowners have a right to be indemnified.

3.3. National oil transport system

In accordance with Law no. 238/2004, the national system of oil transport is part of the public property and is of strategic importance. All investments made over the period of the concession by the titleholder become part of the public property.

The transit of the oil is made through main pipelines on a contractual basis, which is negotiated by the entities appointed by the Romanian Government with their correspondent entities from other states involved.

The transport of the oil through the national oil system is a public service of strategic importance and of national interest. The concessionaire of this service acts in a capacity of a general transporter and is compelled to:

- (i) insure the integrity both in terms of quantity and quality of the transported oil, except for technological losses;
- (ii) ensure backup needed for the safe, flexible and efficient operation of the system in accordance with the applicable technical regulations.

3.4. Concession in the oil sector

Oil exploration works can be performed based on non-exclusive prospecting permits for perimeters determined by ANRM and granted for a period of maximum 3 years without the possibility of extension.

Concession of oil operations is made based on oil agreements concluded between ANRM and Romanian or foreign legal persons subsequent to a public auction procedure. The auction procedure shall follow a public offer organized by ANRM. The concessionaires are selected by comparing their offers mainly based on the financial and technical capabilities of the bidders. In case the concession is granted to a foreign legal person, such entity is bound to maintain, for the whole concession period, and under the terms stipulated in the oil agreement, a branch or a subsidiary in Romania. The oil agreement enters into force after its approval by the Government and its maximum term may not exceed 30 years (with the possibility to be extended for an additional 15 years period).

3.4.1. Rights and obligations of the titleholder

The law provides for several rights of the concessionaire over the concession period, as follows:

- (i) use and access to the necessary premises in order to perform the oil operations, inside the perimeter granted through the oil agreement;
- (ii) access to pipelines, docks, ports and other outfits, if needed, for accomplishing the oil operations (research and development). The access will be granted by paying the relevant tariffs to the concessionaires of the national oil transportation system and oil terminals;
- (iii) build necessary roads, bridges, and railroads in order to accomplish the oil operations and the transport of products deriving from exploration;
- (iv) request the concession of useful mineral substances exploration, other than oil, discovered during its oil operations, in case such substances may be exploited and capitalized.

The law provides also for several obligations to be observed by the concessionaire during the concession, as follows:

- (i) compliance with the relevant norms and instructions and the provisions of the oil agreement;
- (ii) preparing the technical and economical documents for accomplishing the oil operations. These documents are subject to ANRM's approval;
- (iii) informing the competent authority in respect of the controls conducted by the labor and environmental protection local authorities;
- (iv) returning to ANRM the oil perimeter within 60 days since termination of the concession.

3.4.2. End of concession

The concession ceases in case (i) the period for which it has been granted expires, (ii) the concessionaire waives it, (iii) ANRM withdraws it, due to breach of concession terms by the concessionaire and (iv) the concessionaire requests the termination due to a force majeure event, which renders impossible the initiation, or, as the case may be, the continuation of oil operations.

As of the date of the concession cessation, the oil perimeter, with all its facilities and annexures, is transferred to the State property, with no indemnity payable and free of charges.

3.4.3. Royalties and Incentives

Beneficiaries of the oil agreements owe to the State budget an oil royalty, set as follows:

- (i) a quota of the gross extracted production value, for oil reserves operations;
- (ii) a 10% quota from the value of the gross incomes obtained from operations of oil transport, as well as from oil operations performed through oil terminals, located on State property;
- (iii) a 3% quota from the value of the gross income obtained from operations of subterranean storage of natural gas.

The oil royalty is due from the beginning of the oil operations, and is payable on a quarterly basis.

In accordance with the Romanian Fiscal Code, excises are due for the oil extracted in Romania at the time of delivery. However, producers that directly export the extracted oil are exempt from paying such excise. Another incentive that oil producers' benefit of is the exemption from the local property tax of the oil wells owned by the oil producers.

4. Natural Gas

4.1. Natural Gas Sector Policies

The Romanian Government determines the state policy in the natural gas sector in order to set the objectives and the optimal ways to implement such objectives having in view a durable development. Such policy is elaborated based on:

- (i) building the institutional framework by setting competent entities and authorities in order to implement such policy;
- (ii) forecasting the level of imports and exports, elaborating development programs in the natural gas sector and ensuring the environmental protection;
- (iii) insurance of the price transparency and regulating tariffs in view of growing efficiency in production, deposit, transport, distribution and use of natural gas;
- (iv) issuing guidelines with respect to research and development of the natural gas sector;
- (v) drafting regulation proposals in the sector.

4.2. Competent authority

The national regulatory authority in the electrical energy and natural gas sector, the National Energy Regulatory Authority (“ANRE”), is a public institution with legal status, coordinated by

the Prime Minister. It represents the competent authority assigned to draw up, establish and monitor the implementation of mandatory regulations from the natural gas sector under conditions of efficiency, competition, transparency and consumer protection. ANRE has *inter alia* the following powers and duties:

- (i) prepares, submits and sets the validity conditions for approval to the Government the Regulations on permits and licenses in natural gas sector;
- (ii) establishes the validity conditions for the awarded permits and licenses;
- (iii) draws up and approves the regulations for the examination and authorization of the personnel of the entities that design, execute and explore in the natural gas sector;
- (iv) draws up and approves regulations and technical norms at national level on the technical safety level for an efficient development of the natural gas system and submits for the Governments' approval the methodology of granting technical certificates;
- (v) draws up and approves the regulations for certification of the project controllers and the natural gas experts;
- (vi) draws up, approves and applies the regulations on the organization and functioning of the natural gas market, regarding the continuity and safety of the natural gas supply to the consumers;
- (vii) endorses the clauses and terms of the concession agreements for the natural gas transportation and distribution systems;
- (viii) draws up and approves standard contracts regarding the supply of the natural gas, transport, transit, deposit and distribution of natural gas and standard contracts for connected services on a tariff basis;
- (ix) issues technical norms at national level by setting technical security criteria, minimum technical requirements criteria for the efficiency and safety in natural gas sector;
- (x) monitors the internal natural gas market and the observance of the regulations regarding the organization and functioning of the natural gas market;
- (xi) establishes criteria and methods for price and tariffs calculation in the natural gas sector.

4.3. Production, transport, transit, distribution, storage and supply of natural gas

The natural gas producer may be a legal entity that has as an object of activity the natural gas production, party in an oil agreement, holder of a license for setting up/functioning of the surface technological utilities needed for production and holder of the supply license for the natural gas supply.

The natural gas transport activity (a public service of national interest) may be performed by legal entities holders of a transport license, that have as activity object natural gas transportation.

The National Natural Gas Transport System (SNT), in high pressure regime of over 6 bar, is constituted from the main pipe lines, as well as from all the installations, equipment and related facilities, that ensures the transportation of the natural gas extracted from the exploitation perimeters or import originated, in order to be fed to dispatchers, direct

consumers, or export and/or to be stored. SNT is part of the State public property and is considered of strategic importance.

The transit activity consists in transport through the national transport system and/or through the main pipelines on the Romanian territory, with or without reloading the natural gas from another state, destined to a third state.

Natural gas transit activity through already existing pipelines is ensured by the SNT operator. The transit contracts are negotiated by the SNT operator on a commercial and legal basis in accordance with the national legislation and international treaties, which Romania is a party to.

The natural gas distribution activity is a public service of national interest. The natural gas distributor is the legal entity, titleholder of a distribution license under the terms of Law no. 351/2004 which has a specific activity object the distribution of natural gas. According to Law no. 351/2004 the captive consumers are persons obliged, due to regulation constraints, to acquire natural gas from a specific producer or distributor, holder of a supply license. Natural gas distributors have, among others, the right to use, with the consent of the local public authorities, and free of charge, the local public lands, for the execution, exploitation, maintenance and repair works.

The operator of natural gas deposit must grant the producers and/or suppliers equal and non discriminating access to storage facilities in accordance with ANRE regulations. They also have the obligation to reserve a minimal storage capacity for the transporter.

The natural gas supply is the activity performed by holders of supply licenses by virtue of a supply contract concluded between the supplier and the consumer/client and which must contain the clauses stipulated by ANRE in the standard-contracts set forth depending on consumer categories. The natural gas subject to the supply contract may not be re-sold by final consumer.

4.4. Authorizations and licenses

Building new production, transport, storage and distribution facilities, the upgrade and refurbishment of the existing capacities as well as commissioning of the same may be exclusively performed by Romanian or foreign legal entities holders of a license issued by ANRE.

Authorizations for the main objectives in the natural gas field are: set up licenses, functioning licenses and amending licenses. The types of licenses in this respect are:

- (i) supply license;
- (ii) transport license;
- (iii) storage license;
- (iv) dispatching license;
- (v) distributions license;
- (vi) transit license.

4.5. Certification in the natural gas sector

All equipments, technologies, devices, machineries, products, and measures used in the natural gas sector must be technically attested by the competent authority based on a methodology set up by ANRE and approved by the Government.

4.6. Access and access denial to SNT

The access with the SNT, the distribution systems and the upstream pipes is divided in two categories: the connection with a system and the use of a system. Denial of access to the SNT may appear in case of:

- (i) the capacity of the system is insufficient;
- (ii) there are no component parts of the system to which the connection will be made;
- (iii) the access to the system restrains the fulfillment of the public service duties and the safe exploration;
- (iv) the required used devices do not comply with the minimum requirement on environment and safety;
- (v) the quality of the natural gas that is to be inserted in the SNT does not comply with the minimum requirements;
- (vi) incompliance with the payment obligations for the services of the system operator, as provided by an agreement;

The new major natural gas infrastructures, the interstate connections, the natural liquefied gas and the storage equipments may, at request, be exempt from the provisions regarding access denial to the SNT based on ANRE's motivated decision. Such decision is published in the Official Gazette and communicated to the European Commission.

4.6.1. Direct main pipe lines

Based on the eligible consumers request, ANRE may approve the use of a direct main pipe line which is used for the supply of an eligible consumer directly from the upstream pipe lines or from import. Such direct main pipe line will be owned by the eligible consumer if built on its expense and only if it does not affect the tariffs for the rest of the users.

4.7. Concession in the natural gas sector

Natural gas production, transport, storage and distribution facilities, the land belonging to the same, as well as the natural gas transport, storage and distribution may be granted into concession to Romanian or foreign legal entities. Such concession is governed by GEO no. 34/2006 and Law no. 351/2004.

The concession of the natural gas distribution service may be used exclusively for the areas for which it was granted.

Investors interested to participate in a tender having as object the concession of the gas distribution service must previously obtain a temporary license from ANRE for the performance of the service that is subject to concession. After the concession is granted, the concessionaire must obtain all required authorizations/licenses, in order to perform the distribution activity.

The concession ceases by waiver or authorization and/or license withdrawal, as well as under the terms stipulated by GEO no. 34/2006.

The concession ends (i) at the end of the concession period, (ii) if the concessionaire waives the concession agreement or (iii) the conceding authority withdraws the concessionaire's right following incompliance with the obligations provided by the concession agreement.

During the concession period, the concessionaire may use third parties private property or may have an underground, surface or aerial easement right for the entire period of existence of the natural gas equipments, in order to perform the transport or distribution service.

4.8. Prices and tariffs

The price and tariffs system is conceived with a view to ensure fair competition on the market, energy saving and the improvement of the quality of the natural gas and the services in this sector. No social security policies may be promoted through the price and tariffs system.

Law no. 351/2004 provides the following prices and tariff categories:

- (i) negotiated, as a result of the market competition mechanisms between suppliers and eligible consumers. The eligible consumer is the Romanian or foreign individual or legal entity that has the complete freedom to buy natural gas from any producer and/or supplier that has access to the system;
- (ii) regulated; regulated prices are approved through the order of ANRE's President and are published in the Official Gazette; the order shall contain also the date of entry into force of the new prices and tariffs.

The regulated prices concern natural monopoly activities and supply based on framework agreements such as:

- (i) supply of natural gas to the consumers at regulated price based on a framework agreement;
- (ii) management of commercial agreements and contractual balancing of the internal market;
- (iii) natural gas transport;
- (iv) underground storage of the natural gas;
- (v) natural gas distribution;
- (vi) natural gas transit;
- (vii) other activities related to the above.

5. Mineral Resources

5.1. Mining activities

The mining activities include:

- (i) all works regarding prospecting, exploring, development, exploitation, processing, concentration, sale of the mining products, preservation and closing of mines, including works for environmental recovery and rehabilitation, as well as
- (ii) other activities necessary for the development of mines and quarries, namely construction and assemblage of the plant and of tailings management facilities, equipment and other specific tools, which are necessary for the extraction, processing, transport and temporary storage of mining products, tailings, and residual products, outside and/or underground works for the extraction of the mineral resources/reserves, their possession and delivery in specific forms, as well as the research works for the increase of the knowledge on mineral resources and reserves.

5.2. Competent Authority

The National Agency for Mineral Resources (“**ANRM**”) is the competent authority responsible for the application of the provisions of Law no. 85/2003.

ANRM has the following main powers in the mining sector:

- (i) manages the mineral resources and the national geologic fund which are public State property,;
- (ii) issues licenses and permits required by law, sets their clauses and conditions and regulates the performance of mining activities through norms, rules and technical instructions issued for the law’s enforcement;
- (iii) monitors and tests the production of natural minerals in order to calculate royalties;
- (iv) orders the suspension of mining works performed outside the instituted perimeter, of any works lacking authorized technical documentation, as well as of any works that involve irrational exploitation or resources degradation, until their causes are removed.

5.3. Concession in the mining sector

5.3.1. Overview

For the exploitation of mineral resources, the mining activities may be granted into concession to Romanian or foreign legal persons or granted into administration to public institutions.

In order to develop mining activities, the applicant may request permission to develop the following activities: (i) prospecting activities, (ii) exploration activities and (iii) exploitation activities.

- (i) The prospecting activities refer to all the necessary studies and surface works carried out in order to identify the potential existence of mineral resources accumulations.

Prospecting is performed based on a non-exclusive permit issued for a maximum 3 years period based on a prior payment of an annual tax, without any right of extension.

The holder of the prospecting permit should perform a volume of works with a minimal value established by negotiation with the competent authority and shall submit half - yearly and annual reports to the competent authority regarding the value of the works developed, supported by documents.

- (ii) Exploration activities refer to all studies and activities necessary for the identification of the deposits, their quantitative and qualitative valuation, as well as the setting of the technical and economic conditions for capitalization.

Exploration activities are performed based on an exclusive license, granted to Romanian and foreign legal entities for any mineral resources discovered in the perimeter.

The exploration license is granted to the winners of the public tender for a 5 year-term and may be extended for a maximum period of 3 years.

- (iii) Exploitation activities refer to all works carried out underground and/or at the surface for the extraction of the mineral resources, their processing and delivery in specific forms.

The exploitation license is granted for a 20 year-term and may be extended for successive 5 year-terms.

Exploitation activities are performed based on an exclusive license granted as follows:

- (i) Directly to the titleholder of the exploration license at its request, in a 90 day- term as of the submission to the competent authority of the final report, for any discovered mineral resources;
- (ii) To the winner of the public tender, organized by the competent authority under Law no. 85/2003, for the mineral resources described by the order of the competent authority, published in the Romanian Official Gazette.

5.3.2. Rights and obligations of the titleholders

The titleholder of the exploration license is entitled to:

- (i) decrease the area of the exploration perimeter, based on the competent authorities consent, under the condition of providing the relevant documents and the evidence that all the environmental restoration works have been performed;
- (ii) directly obtain the exploitation license for any mineral resources discovered.

The titleholder of the exploitation license is entitled to:

- (i) have access to the lands necessary for carrying out the mining activities within the limits of the perimeter set forth in the license;
- (ii) dispose of the quantities of the mining products achieved;
- (iii) obtain, hold and use the data and information necessary for developing the mining activities from the competent authority or from its own activity.

As per the provisions of Law no. 85/2003, the titleholder of the license has the following main rights and obligations:

- (i) performing mining activities in a 210 day-term, as of the enforcement of the license;
- (ii) maintaining the confidentiality of the data and information related to the mining activities, obtained from the competent authority or from its own activity;
- (iii) maintaining during the entire period of the exploitation activities, a financial guarantee for the environmental restoration and bearing all costs related to the transfer of technology and professional improvement provided in the license;
- (iv) obtaining all authorizations, permits and endorsements necessary for developing mining activities, based on the operation license.

5.3.3. Royalties and Incentives

The titleholders of the licenses owe to the State budget taxes for prospecting activities, exploration activities and exploitation activities of the mineral resources.

The titleholder also owes a mining royalty, determined from the annual achieved mining output and due as of production inception.

As per the provision of art. 50 of Law no. 85/2003, that have been repealed by Law no. 237/2004 which amended the Mining Law, the titleholders of the licenses benefited of various fiscal incentives. According to art. 60¹ of Law no. 237/2004, "*incentives qualifying as state aid*

for the titleholders of the licenses concluded before the coming into force of this law may be granted in compliance with applicable law on state aid”.

5.3.4. Transfer, suspension and cessation of the concession licenses

a) Transfer of the license

Based on the prior written consent of the competent authority, the titleholder of the license may transfer to other legal persons the rights and the obligations arising out of the license. For the transfer of the license, ANRM establishes objective criteria of evaluation.

In case the titleholder of the license amends its statute by reorganization, sale or any other means, the operation license may be transferred by an addendum to any legal successor of the titleholder, based on Court decision or on the parties' agreement, presented to ANRM.

b) Suspension of the license

ANRM may suspend the license whenever it ascertains the titleholder:

- (i) fails to obey a Court decision regarding the disputes arising out of the performance of the mining activities;
- (ii) undergoes reorganization or bankruptcy;
- (iii) the endorsement or the authorization regarding environmental protection or labor protection has been suspended;
- (iv) by the manner it performs the mining activities, it endangers the possibility to exploit the deposit in the future, or it infringes the norms regarding the deposits protection and the safe operation;
- (v) perpetrates serious infringements, acknowledged by the competent authorities, regarding labor health and safety regulations.

The suspension of the operation license has effects as of the communication date of the relevant decision by ANRM, until the cause that determined the suspension is remedied, but not more than 1 year.

c) Cessation of the mining concession

The mining concession ceases by:

- (i) expiry of the term for which it has been granted;
- (ii) waiver by the license titleholder;
- (iii) revocation of the license by ANRM;
- (iv) the titleholder's request in case of force majeure which trigger the objective and final impossibility of complying with certain obligations and/or fulfillment of the rights of the titleholder, mentioned in the license and which are essential for the performance of the mining activities;
- (v) the exhaustion of the exploitable reserves, only in case of concession /granting in administration of the exploitation mining activities.

The concession ceases based on a decision of ANRM. In a 3 months-term as of the cessation of the concession, the technological annexes and fixtures the dismantling of which may endanger the work safety are returned in state's property without any indemnity or free of any encumbrances, regardless of their nature.

5.4. Mine Closure

The mining activity for the exploitation of ore deposits ceases whenever:

- (i) Exploitable mineral resources are exhausted;
- (ii) The continuation of the activity becomes impossible due to certain causes (floods, earth falls etc), the effects of which cannot be remedied by technical intervention measures in economic conditions;
- (iii) The operation has become economically unprofitable.

At the request of the titleholder, ANRM may endorse the temporary or final closing of the activities based on a cessation plan.