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Briefing

Tanzania's 4th Offshore Licensing Round: Key Terms

The 4th Tanzania Deep Offshore and North Lake Tanganyika Licensing Round was launched in Dar es Salaam on 25 October by President Jakaya Kikwete. In a speech aimed at both promoting investor confidence and reassuring Tanzanian citizens that the country's gas resources would be used for the development of Tanzania as a whole, President Kikwete declared that Tanzania constantly endeavoured to improve its investment climate and would not "kill the goose that lays the golden eggs". In this briefing, we outline the key terms relating to bidding for the seven offshore and one onshore blocks which were revealed as part of the launch event.

MPSA 2013

Tanzania's upstream industry is governed by the Petroleum (Exploration and Production) Act 1980 which lays down the machinery for the granting of licences for exploration and development. The rights to explore for and produce petroleum are obtained by entering into a Production Sharing Agreement ("PSA") with the government (acting through the Ministry of Energy and Minerals) and the Tanzania Petroleum Development Corporation ("TPDC"). Under the PSA, TPDC will apply for and hold licences and in turn engage the participating oil and gas company as contractor to undertake exploration, development and production activities.

Tanzania's 2013 Model Production Sharing Agreement (**MPSA 2013**), which was unveiled at the launch of the licensing round, will form the basis for PSAs negotiated between successful bidders and the Government of Tanzania. Key terms contained in the MPSA 2013 are summarised below[1]:

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[1] Please note that this is a summary and not a definitive statement of terms contained in the MPSA 2013. Capitalised terms used are as defined in the MPSA 2013.

Term	Exploration up to 11 years (initial and renewal periods of 4, 4 and 3 years respectively). Appraisal up to 3 years for oil and 4 for gas. Development and Production up to 25 years with the possibility of an extension for a further 20 years.
Relinquishment	50% of the retained contract area upon each renewal of an exploration licence.
Participation	Provision for TPDC to negotiate a participating interest of "not less than" 25% of contract expenses during the development phase only. Also provides a mechanism for the contractor to loan amounts to TPDC to cover its contract expenses, which amounts shall be recovered from TPDC's cost oil or gas.
Work program	Negotiable.
Cost recovery	Cost recovery limited to 50% of production per period with ring-fencing based on the individual exploration or development licence.
Production sharing	Negotiable and based on tranches of daily total production. TPDC profit share varies for oil/gas and offshore/onshore areas. For offshore gas, TPDC's share ranges from 60% to 85%.
Taxation	The contractor shall be subject to Tanzanian taxes on income derived from petroleum operations. The MPSA 2013 also provides for Additional Profits Tax.
Annual fees	USD 50/sq.km p.a. - initial licence period USD 100/sq.km p.a. - first renewal period USD 200/sq.km p.a. - second renewal period Training fee - non-negotiable USD 500,000 p.a.
Bonuses	Signature bonus - minimum USD 2,500,000 Production bonus - minimum USD 5,000,000
Royalties	12.5% for onshore/shelf and 7.5% for offshore of total crude oil/natural gas production taken prior to cost recovery.
Import duty exemption	All equipment and material etc. imported for use in petroleum operations can be imported free of all duties and import taxes and can be re-exported free of any export duty or tax.
Domestic market obligations	MPSA 2013 contains a slightly modified mechanism from previous MPSAs and provides that "TPDC and the Contractor shall have the obligation to satisfy the domestic market in Tanzania from their proportional share of production". The volume which TPDC and the contractor shall be required to supply shall be determined by the parties by mutual agreement on a pro rata basis with other producers.
Assignment	Assignment to third parties (including affiliates) requires the prior consent of the Minister.
Local content	More detailed local content provisions are included than in previous MPSAs including a requirement to comply with the Government's "Local Content Policy".
Performance guarantee	Bank and parent company guarantees to be provided.
Stablisation	No stabilisation clause included.
Arbitration	Provision for disputes to be settled in accordance with the International Chamber of Commerce Rules of Conciliation and Arbitration. The arbitration is to be held in Dar es Salaam and Tanzanian law shall apply.

In addition to the terms referenced above, the MPSA 2013 makes provision for a decommissioning fund and includes articles relating to anti-corruption measures and the coordination and unitisation of petroleum operations which were not covered in previous MPSAs. Insurance over Petroleum Operations shall be taken out with "Tanzanian registered insurance company(s) approved by TPDC".

Bidding instructions

TPDC's tender inviting PSA application proposals provides potential bidders with guidance on the application process. Bidders may apply as individuals or in consortium and shall be allowed to bid for all blocks "but only one block will be awarded to a bidder".

A complete set of bidding documents can be obtained from TPDC in Dar es Salaam or downloaded from TPDC's website and the Bid Round Data Package (BRDP) for offshore blocks, Lake Tanganyika North and SPAN seismic data can be obtained from ION GeoVentures who are acting on behalf of TPDC.

The mandatory BRDP for offshore blocks is available at USD 750,000 per pack; mandatory BRDP for Lake Tanganyika North is USD 350,000 per pack and mandatory 2D SPAN data is USD 3.375m per pack. Further optional data is available at an additional cost.

A non-refundable fee of USD 50,000 must also accompany each bid. All bids must be submitted by 10:00am East African Time on 15 May 2014 and tenders will be opened promptly thereafter in public.

Evaluation criteria

TPDC also outlined the criteria on which bids would be assessed. Primary examination would be made of bid responsiveness and eligibility followed by a more detailed examination of key features of the bid which would be weighted out of 100 points as follows:

- Work program (46)
- Technical capability (10)
- Financial capability (6)
- Fiscal package (34)
- Safety, health and environmental protection policy (4)

TPDC have also indicated (though without specifying how this is reflected in the evaluation criteria) that domestic bidders may receive a "margin of preference" and that IOCs bidding in consortium or as part of a joint venture with domestic companies would be preferred.

Clyde & Co supporting licensing round bidders

As a leading international energy specialist law firm, our lawyers have extensive experience of advising on the largest and most complex international and domestic mergers and acquisitions, corporate financings, acquisition financings, international public offerings, joint ventures, production sharing contracts, licenses, concessions and other commercial contracts for clients in the oil and gas sector across Africa.

Our familiarity with the regulatory landscape in Tanzania makes us ideally placed to advise on and negotiate production sharing agreements and to assist companies participating in licensing rounds and we welcome enquiries from companies looking to bid in the 4th Tanzania Deep Offshore and North Lake Tanganyika Licensing Round.

Contact us

This monthly briefing is prepared for clients and contacts of Clyde & Co operating in the energy sector in Tanzania. We aim to keep our clients abreast of developments in the sector as they happen and if you have any questions on the issues raised above please contact us using the details provided.

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Further advice should be taken before relying on the contents of this summary.