

A new Hydrocarbon Law was applied in Bolivia

Carlos Alberto Mostajo

The Hydrocarbon Law 1689 was laid down on April 30, 1996. Many oil companies, aside from some that already worked in Bolivia, decided to perform their activities in this country and entered into joint venture contracts with the state company Yacimientos Petrolíferos Fiscales Bolivianos, henceforth called YPF. Unfortunately, the joint venture contracts signed then were not authorized nor ratified by the Bolivian Congress, failing to observe art. 59-5) of the Political Constitution of the State.

Out of the work performed by the companies in charge of the hydrocarbon exploration, it was established that there are 26.7 TCF of proven gas reserves, and 22 TCF of probable gas reserves, according to estimations performed by DeGolyer and MacNaughton in the year 2005, this data places Bolivian gas reserves as the second ones in Latin-American, but with the advantage that unlike Venezuela, who has the first place in gas reserves, the Bolivian gas is not associated.

At present, Bolivia has subscribed a Gas Sale Agreement (GSA) with the Federative Republic of Brazil to export to that country up to 30 million cubic meters a day until the year 2019 and recently Bolivia has subscribed a gas sale contract with the company Energía Argentina S.A., to export to Argentina up to 30 million cubic meters a day during the next 30 years. That means that Bolivia has many important reserves and a market to commercialize them.

A Referendum was performed in Bolivia on July 18, 2004, aimed to decide the way in which the country should use the hydrocarbon resources and, in that popular survey, the guidelines for the new Hydrocarbon Law No. 3058 were defined, which became effective on May 17, 2005. Later, The Executive Power issued the Supreme Decree No. 28701. Such legal provisions defined the rules for oil operations. It is pertinent to mention some of the main aspects of this legal provisions, which may be of interest for the oil companies, called titleholder (in singular) or titleholders (in plural), the following:

1. The re-establishment of YPF. This state company will be the one that receives all the hydrocarbon production of the country and will be in charge of the commercialization within the country as well as abroad and will also be in charge of the industrialization.
2. The State will hold 50% of the value of the gas and oil production for the payment of 18% on account of royalties plus 32% of Direct Taxes to Hydrocarbons (IDH). These royalties and tax payments may be in kind or American Dollars, according to the following assessment criteria:
  - 2.1. The oil price in the control point:
    - 2.1.1. For the internal market, it will be based on real sale prices in the internal market.
    - 2.1.2. For export, the real export price adjusted by the quality or WTI price that is published in the Platts Oilgram Price Report bulletin, whichever that is greater.
  - 2.2. The natural gas price in the control point will be:
    - 2.2.1. The price effectively paid for exports.

2.2.2. The price effectively paid in the internal market.

These prices will be adjusted per quality for the internal and external market.

2.3. The liquefied petroleum gas (GLP) in the control point will be based on:

2.3.1. For the internal market, the real sale price in the internal market.

2.3.2. For export, its real export price.

3. The 50% remaining for the titleholder has contemplated the following taxes:

3.1. The Added Value Tax of 13% that can be deducted with shopping bills.

3.2. The Tax to Transactions of 3% (Compensable with IUE paid on the immediate former year.

3.3. Tax to the Profits of the Enterprises (IUE) of 25% on the profits, if there were any. This payment, as explained in the previous point 3.2, may be compensated with the later payment of Tax to Transactions.

3.4. Besides, the branches, in order to perform direct deposits or payments to the main office, must observe what is established in art. 51 of Law 843 in relation to the payment of 12.5% for remittance of Bolivian income to beneficiaries abroad.

4. As determined in Supreme Decree 28701, during the transition period of hydrocarbon contracts of 12 oil enterprises to the contracts recently subscribed at the end of October, 2006, which were 44 in total. Only two mega fields whose certified natural gas average production in the year 2005 had been above the 100 million cubic feet a day, had to pay taxes for 82% (18% of royalties and Participations, 32% of IDH and 32% Additional participation for YPFB), while the remaining hydrocarbon fields which were smaller, would only pay 50% of taxes (18% of royalties and participations and 32% of IDH). All this away from what is contemplated in point 3 of this article.

5. There are tax incentives aimed to benefit anyone who implements industrialization projects, gas pipeline networks, domiciliary installations and change of energy matrix to natural gas.

6. Tax stability agreements may be established with private investors for a term of 10 unrenovable years.

7. The exploitation of hydrocarbons must promote the integral, sustainable and fair development of the country, guaranteeing the supply of hydrocarbons in the internal market, motivating the expansion of consumption in the entire sector of the society, developing its industrialization in the Bolivian territory and promoting the export of the surplus hydrocarbon production.

8. Article 16 of the Law reproduces what is already established in the Political Constitution of the State, in relation to the inalienable and imprescriptible property of the hydrocarbon deposits to the State, whatever its state or the way in which they are presented. No contract may concede the property of neither the hydrocarbon deposits nor the hydrocarbons neither in the surface area nor to the control area to any national or foreign private enterprise.

The State has the control and direction of production, transport, refining, storage, distribution, commercialization and industrialization of hydrocarbons in the country. As stated in Supreme Decree 28701, the Ministry of Hydrocarbons and Energy will regulate and lay down the rules for these activities until new regulations are approved.

9. The shared production, operation or association contract titleholders are bound to give to YPFB, in representation of the State, the entire hydrocarbon that is produced.

10. The exploration, exploitation, commercialization in the internal market, export and transport of hydrocarbons and its by-products, correspond to the State, this right will be

exercised by means of YPFB or through allowances and contracts for limited period of time, to mixed societies or individual or collective, public or private people, or anyone associated with them.

11. As determined by Law 3058, the storage, refining, industrialization, transport and distribution of natural gas through networks may be performed by the State, via YPFB, by individual or collective, public or private people, or anyone associated with them.
12. As determined by Law 3058 in relation to the institutional organization of the hydrocarbon sector:
  - 12.1. The Ministry of Hydrocarbon and Energy is the authority that elaborates, promotes and supervises the State policies in relation to Hydrocarbons.
  - 12.2. YPFB is re-founded as an autarkic enterprise of Public Law, under the tutition of the Ministry of Hydrocarbons.
  - 12.3. The Regulating Entity of transport, refining, commercialization of products and by-products and distribution of natural gas through networks is the Superintendence of Hydrocarbons of the Systems of Sectorial Regulation (SIRESE).
13. As for the exploration, as determined by Law 3058, the free areas within the area of hydrocarbon interest, will be awarded by means of international public biddings.
14. The exploration, exploitation, shared production, operation or association contract titleholders who have made a commercial discovery, must declare the Merchantability so that it is approved, based on the combination of technical, economic, and market factors that make profitable its exploitation, as determined by Law 3058. The Declaration of Merchantability will be declared before the YPFB. Later, the titleholder may select an area for its exploitation.
15. Upon installment maturity of any contract or termination for any reason, the area will be returned to the State through YPFB so that it may be nominated, tendered, and or awarded at a later time.

In such case, the titleholder is bound to leave the facilities in operative conditions to YPFB to continue activities. In this case, the titleholder will assume the environmental liabilities generated until the moment of the transference.
16. The contracts made by the State will include provisions to compensate the investments in non depreciated furniture and facilities that are in operation in the area of the contract by the titleholder. At the end of the contract, such furniture will be transferred to YPFB free of charge. If the fields in the contract area were in production, YPFB may operate them directly or under association contract.
17. YPFB will pay to the General Treasury of the Nation (TGN) of the Republic of Bolivia the yearly patents established in the same Law, for the areas subject to oil contracts. The patents will be paid in prepaid annuities and initially upon the subscription of the contract, in twelfths if the term does not coincide with a calendar year, independently of taxes that correspond to the mentioned activities. The title holder must reimburse to YPFB these payments on account of Patents, and may discharge them as expenses in its accounting, but they may not accredit them for fiscal purposes.
18. As for oil contracts, Law 3058 determines that any individual or collective, national or foreign, public or private person may make shared production, operation or association contracts with YPFB, to perform exploration and exploitation activities for up to 40 years.

Such contracts may be performed before a Notary of the Government and must include, under penalty of nullity, clauses relating to: antecedents; parts of the contract, competence and legal capacity; objective and term; warranty of compliance with the contract; Setting of area and its location object of the contract indicating whether it is a traditional area or not, the number of lots, amount of work units for committed exploration and its equivalence in money; earnings or participation of the titleholder; regime of patents, royalties, taxes, participations and bonds; commitment to deliver technical, economical, commercial information, studies of reservoirs by means of mathematical models, other methods and any other information related to the objective of the contract that YPFB considers relevant; obligations and rights of the parties, among others, the reasons for contractual discharging and regime of damages and losses due to failure to comply agreed obligations; regime of controversies solution; endowment, subrogation and transference of contract; stipulations related to conservation and protection within the framework of the Environmental Law; Preparation of preferred contracts of labor force, goods and national services, as well as the YPFB personnel training; abandonment of protests by diplomatic means, and; legal residence in Bolivia for both parties.

All the operation, shared production, association contracts and its modifications must be authorized and approved by the Bolivian Congress.

19. YPFB will be the Adder and Loader of the entire exportation of Natural gas made from within the Bolivian territory, as established by Law 3058.
20. The Superintendence of Hydrocarbons will be the entity that sets the maximum prices of oil, crude, GLP, regulated products, imported regulated products and natural gas, for the internal market, in national currency, as well as the updating parameters, as established by Law 3058.

The Superintendence of Hydrocarbons will also be the entity that awards concessions for the transportation by means of ducts, after observing the legal, technical and economic requirements, upon request of the interested party or by means of competitive biddings. The transportation of hydrocarbons through ducts is ruled by the principle of free access, by which any person has the right to access a duct.

The Superintendence of Hydrocarbons is the entity that approves the tariffs for the transportation of hydrocarbons and sets the margins for refined products.

The Superintendence of Hydrocarbons also awards the authorizations and licenses of construction and operation for storage plants of liquid and gaseous fuel to legally established enterprises, having previously observed the legal, economic, technical and industrial and environmental safety requirements.

The allowances for activities of refining, transport and distribution of natural gas through networks, will be awarded by the Superintendence of Hydrocarbons for a maximum period of 30 years.

21. The industrialization of hydrocarbons in Bolivian territory has been declared the national necessity and priority.

The nationalization of the hydrocarbons determined by the Bolivian Government did not imply the confiscation nor expropriation of investments performed by oil companies in Bolivia, and by the end of October, 2006, the oil companies: Total Exploration Production Bolivia, Vintage Petroleum, Matpetrol, Pluspetrol, BG Bolivia Corporation, Repsol YPF, Empresa Petrolera Andina, Empresa Petrolera Chaco, Petrobras Energía, Petrobras Bolivia,

Dong Wong and Canadian Energy that operated in Bolivia, came through agreements with YPF, that were satisfactory for all the parties and, therefore, signed new operation contracts to continue working in the country.

There are important hydrocarbon reserves in Bolivia, there are markets to commercialize this reserve and there is an interest in good business on the side of the oil companies and the Bolivian State. Therefore, there are good conditions to make big business in Bolivia.

Bolivia has today open doors for investment in the sector, and recently we have been informed that North American, Chinese and the Venezuelan enterprises have serious intention to establish themselves in Bolivia and make hydrocarbon contracts with YPF.

The companies that are interested in industrializing Bolivian gas may access a series of incentives to do it. Besides, observing what was established by the Political Constitution of the State, there is a political willingness of the National Congress to authorize and approve the new hydrocarbon contracts, we anticipate a long-lasting and stable juridical security for anyone interested in investing in Bolivia and a good number of new businesses in the hydrocarbon sector.

For the Director of the World Bank, Marcelo Giugale, Bolivia has with the gas an unprecedented opportunity: Legitimate government, economic health and a favorable external sector. Bolivia may turn from an extremely indebted country to a country an annual growth of 7%. Having migrated the contracts of oil companies operating in Bolivia in an agreed manner has been very beneficial for the State and the oil companies, and this fact has given again confidence to investors in order to consider Bolivia a good destination for their investments.

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