



**COUNTRY
COMPARATIVE
GUIDES 2024**

The Legal 500 Country Comparative Guides

Malaysia

ENERGY - OIL & GAS

Contributor

Rahmat Lim & Partners



Kamilah binti Kasim

Partner and Head of the Firm's Energy, Infrastructure & Projects Department | kamilah.kasim@rahmatlim.com

Phua Syuen Yue

Associate | phua.syuenyue@rahmatlim.com

This country-specific Q&A provides an overview of energy - oil & gas laws and regulations applicable in Malaysia.

For a full list of jurisdictional Q&As visit legal500.com/guides

MALAYSIA

ENERGY - OIL & GAS



1. Does your jurisdiction have an established upstream oil and gas industry? What are the current production levels and what are the oil and gas reserve levels?

(a) Malaysia has a well-established upstream oil and gas industry with both state owned and private companies engaged in the sector as operators of oil and gas blocks and fields.

(b) Since 1974, Malaysia has produced 9 billion barrels of oil and 50 trillion cubic feet of gas.¹ Currently, Malaysia produces 660,000 barrels of liquids and approximately 7.0 billion cubic feet of gas per day.² The country's remaining commercial reserves are estimated at over 17 billion barrels of oil equivalent from more than 400 fields, with gas making up three-fourths of the mixture.³

Footnotes:

¹

<https://www.petronas.com/mpm/malaysia-e-p/production>

² *Ibid.*

³ *Ibid.*

2. How are rights to explore and exploit oil and gas resources granted? Please provide a brief overview of the structure of the regulatory regime for upstream oil and gas. Is the regime the same for both onshore and offshore?

(a) The Petroleum Development Act 1974 ("PDA") is the main legislation governing the Malaysian oil and gas industry. The PDA was enacted to:

(i) provide for the establishment of a corporation i.e. Petrolia Nasional Berhad ("Petronas") under the Companies Act 1965 or under the law relating to the incorporation of companies and for the powers of Petronas;

(ii) provide for the exploration and exploitation of petroleum whether onshore or offshore by Petronas in which will be vested the entire ownership in and the exclusive rights, powers, liberties and privileges in respect of the said petroleum;

(iii) to control the carrying on of downstream activities and development relating to petroleum and its products; and

(iv) provide for matters connected therewith or incidental thereto.

(b) Pursuant to section 2(1) of the PDA, Petronas, a company wholly-owned by the federal government of Malaysia, is the corporation which is vested with the entire ownership in, and the exclusive rights, power, liberties and privileges of exploring, exploiting, winning and obtaining petroleum both onshore and offshore of Malaysia.

(c) Section 10 of the PDA defines Petroleum as any mineral oil or relative hydrocarbon and natural gas existing in its natural condition and casinghead petroleum spirit including bituminous shales and other stratified deposits from which oil can be extracted.

(d) Such ownership and exclusive rights conferred to Petronas under the PDA extends Malaysia's exclusive economic zone and its continental shelf.

(e) Section 7 of the PDA provides that the Prime Minister may make regulations for the purpose of carrying into effect the provisions of the PDA. The Petroleum Regulations 1974 ("Petroleum Regulations") was enacted pursuant to Section 7 of the PDA to regulate, among others:

(i) the conduct of the carrying of any business or service relating to the exploration, exploitation, winning or obtaining of petroleum;

(ii) any business involving the manufacture and supply of equipment used in the petroleum industry;

(iii) downstream activities and development relating to petroleum; and

(iv) the marketing and distribution of petroleum and its products.

(f) Pursuant to Regulation 3 of the Petroleum Regulations, Petronas is the responsible authority for the licencing of:

(i) contractors wishing to participate in the activities relating to the exploration, exploitation, winning and obtaining of petroleum; and

(ii) goods and service providers operating in the upstream sector, including providers of rigs and drilling services and supply of general goods and services related to upstream operations.

(g) The activities relating to the exploration, exploitation, winning and obtaining of petroleum is regulated by Petronas through the grant of licences. In practice, the licence is typically in the form of a production sharing contract ("**PSC**") or a risk service contract ("**RSC**").

(h) The licences for oil exploration and production are generally secured through Petronas' yearly invitation to bid for PSC or RSC, which aim to market oil and gas opportunities to companies who are interested to conduct exploration, development and production activities in Malaysia. Alternatively, farm-ins into the existing contracts may be undertaken with the prior approval of Petronas.

(i) Petronas typically issues bid guideline(s), via its bid portal, myPROdata, for each of the bid rounds setting out the requirements, timeline and procedures for the application and grant of such licences for oil exploration and production.

(j) The Petronas Licence and Registration General Guidelines ("**Petronas General Guidelines**")⁴ sets out the requirements and procedures for the application of Petronas licences to provide goods or services to the upstream sector.

Footnotes:

4

<https://www.petronas.com/themes/custom/petronas/pdf/General-Guideline-PETRONAS-License-and-Registration-v13.pdf>

3. What are the key features of the licence/production sharing

contract/concession/other pursuant to which oil and gas companies undertake oil and gas exploration and exploitation?

(a) The terms of PSCs or RSCs vary. Typically, PSCs and RSCs will specify durations for exploration, development and production. For PSCs, the duration for production is typically 15 to 20 years, which may be extended subsequently from time to time upon an application for extension.

(b) The PSC or RSC typically provides that the title to all equipment and assets purchased by PSC contractors and used for operations are vested with Petronas. The contractors may use those assets for the duration of the relevant PSC or RSC. The costs of such items are recoverable in barrels of cost oil or gas equivalent. Another key term typical to PSCs and RSCs is that Petronas retains title and ownership of all original data acquired (whether raw, processed or interpreted) acquired during the course and for the purposes of the contract.

(c) The limitation of liabilities of each party is set out in the PSC or RSC. The contractors are typically required under the PSC to provide financing and bear the risks of the activities they carry out under the relevant contract in exchange for a share of the total production. The contractors are further required to also seek authorisation prior to incurring costs in excess of a specified threshold, and other approvals from Petronas throughout the duration of the contract. Failure to comply with these terms may give rise to a termination of their rights under the respective agreements.

(d) The PSC or RSC may also contain terms stipulating that where transportation is required for any materials in respect of the facility(ies) in which petroleum related work is being carried out, this shall be arranged by the contractor through the multimodal transport operators which are licensed by the government to handle shipment of government cargo.

(e) Another key term of the PSC would be the requirement on decommissioning which is known as abandonment. The PSC/RSC contractors are responsible for abandonment of all petroleum facilities approved by Petronas to be abandoned. The PSC/RSC contractors, for the purposes of abandonment, are required to submit, among others:

(i) an annual abandonment work programme and budget;

(ii) detailed plans and cost estimates;

(iii) abandonment cost estimates;

(f) No abandonment operation can be carried out unless approved by Petronas in accordance with the PSC/RSC.

4. Are there any unconventional hydrocarbon resources (such as shale gas) being exploited and is there a separate regulatory regime for unconventional?

In Malaysia, although the potential of unconventional hydrocarbon resources such as shale oil, shale gas, coal bed methane, tight oil, tight gas and gas hydrate have been explored, studied and assessed, unconventional hydrocarbon resources have yet to be exploited in Malaysia.

5. Who are the key regulators for the upstream oil and gas industry?

As stated in paragraph 2 above, the regulator for the upstream oil and gas industry is Petronas.

6. Is the government directly involved in the upstream oil and gas industry? Is there a government-owned oil and gas company?

As stated in paragraph 2 above, Petronas enjoys exclusive ownership in petroleum in Malaysia. Petronas is wholly owned by the Government of Malaysia.

7. Are there any special requirements for or restrictions on participation in the upstream oil and gas industry by foreign oil and gas companies?

PSC and RSC

(a) Based on the bid guidelines issued by Petronas as described in paragraph 2(j) above, there does not appear to be any special requirements for or restrictions on participation in the upstream oil and gas industry by foreign oil and gas companies. Like any bidding process, all entities must comply with the bid guidelines issued by Petronas.

Licences to supply goods and services in the upstream sector

(b) An applicant for a Petronas licence to supply goods or services in the upstream sector must comply with the requirements set out in the Petronas General Guidelines and satisfy the Bumiputera participation requirement in accordance with the applicable Standardised Work and

Equipment Categories.⁵

(c) Unless otherwise specified in the licences, there are no specific requirements on the use of a minimum amount of locally sourced goods, services or capital. Local use is encouraged and incentivised through import restrictions or import duties on imports.

Footnotes:

5

[https://www.petronas.com/sites/default/files/uploads/content/2023/New%20SWEC%20List%20\(27%20January%202023\).pdf](https://www.petronas.com/sites/default/files/uploads/content/2023/New%20SWEC%20List%20(27%20January%202023).pdf)

8. What are the key features of the environmental and health and safety regime that applies to upstream oil and gas activities?

Environmental

(a) The Environmental Quality Act 1974 (“**EQA**” and its subsidiary legislations are the primary legislation governing the protection of the environment and among others, the prevention of oil spills and pollutants on land and in Malaysian waters. Relevant subsidiary legislations promulgated under the EQA include:

(i) the Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 2015 (“**Environmental Impact Assessment Order**”);

(ii) the Environmental Quality (Prescribed Premises) (Scheduled Wastes Treatment and Disposal Facilities) Order 1989; and

(iii) the Environmental Quality (Scheduled Wastes) Regulations 2005.

(b) The administration of the EQA and its subsidiary legislations is carried out by the Department of Environment (“**DOE**”) under the supervision and instruction of the Director General of Environmental Quality.

(c) The First Schedule of Environmental Impact Assessment Order provides that for the development and construction of the following:

(i) the development of an oilfield, gas field or oil and gas field;

(ii) the construction of offshore or onshore pipelines exceeding 30 kilometres in length; and

(iii) the construction of oil or gas separation, processing,

handling and storage facilities,

an environmental impact assessment (“**EIA**”) must be carried out and submitted to the Director General of Environmental Quality for approval.

(d) Section 34A(8) of the EQA provides that carrying out the activities set out in paragraph 8(c) above without submitting an EIA report and obtaining the approval of the Director General of Environment Quality in respect of the EIA report is an offence, which attracts liability to:

(i) a fine not exceeding RM500,000;

(ii) imprisonment for a period not exceeding five years; or

(iii) both; and

(iv) for a continued offence, a further fine of RM1,000 for every day that the offence is continued after receiving a notice from the Director General of Environmental Quality requiring compliance with the act specified in the notice.

(e) Section 34B(1) of the EQA also prohibits any person from, placing, depositing or disposing of any scheduled wastes on land or into Malaysian waters without any prior written approval of the Director General of Environmental Quality (except at prescribed premises⁶). Section 34B(4) of the EQA provides that any person in contravention of this section shall be guilty of an offence and shall on conviction be punished with imprisonment for a term not exceeding five years and shall pay a fine not exceeding RM500,000.

(f) Section 27 of the EQA provides that no person shall, unless licensed, discharge or spill any oil or mixture containing oil into Malaysian waters in contravention of the acceptable conditions specified under section 21 of the EQA. Section 21 of the EQA provides that the Minister, may by regulations specify the acceptable conditions for the emission, discharge or deposit of environmentally hazardous substances, pollutants or wastes or the emission of noise into any area, segment or element of the environment and may set aside any area, segment or element of the environment within which the emission, discharge or deposit is prohibited or restricted. Persons in breach will be guilty of an offence and shall be liable to a fine not exceeding RM500,000 or to imprisonment not exceeding five years, or both.

(g) Section 25 of the EQA provides that no person shall, unless licensed, emit, discharge or deposit any environmentally hazardous substances, pollutants or wastes into any inland waters in contravention of the acceptable conditions specified under section 21.

Contravention of this prohibition will lead to a fine not exceeding RM100,000 or to imprisonment for a period not exceeding five years or both.

(h) The Sarawak state legislature has recently enacted the Sarawak Environment (Reduction of Greenhouse Gases Emission) Ordinance 2023 (please refer to paragraph 20 below).

Safety and Health

(i) The Petroleum (Safety Measures) Act 1984 (“**PSMA**”) was enacted to ensure safety in the transportation, storage and utilization of petroleum.

(j) Section 19 of the PSMA provides that no person shall store or handle any petroleum unless he is the holder of a valid petroleum storage licence or a valid petroleum handling licence, as the case may be, granted under the PSMA authorizing the storage or handling of petroleum and providing that such petroleum is to be stored or handled in accordance with such conditions, if any, as may be attached to the licence.

(k) Liability under the PSMA is vicarious and also personal. Where a person is liable under the PSMA for any act, omission, neglect or default, such person will also be liable for any act, omission, neglect or default of any agent or servant employed by him or her in the course of business. These agents or servants employed by a licensed person shall also be liable under section 41 of the PSMA as though they were the person to whom such licence was granted.

(l) Further to the PSMA, the Occupational Safety and Health Act 1994 (“**OSHA**”) was enacted to, among others:

(i) secure the safety, health and welfare of persons at work;

(ii) protect persons at a place of work other than persons at work, against risks to safety or health arising out of the activities of persons at work; and

(iii) promote an occupational environment for persons at work which is adapted to their physiological and psychological needs.

(m) The OSHA is enforced by the Department of Occupational Safety and Health (“**DOSH**”) and applies to petroleum related activities.

Footnotes:

⁶ Examples of prescribed premises are set out in the Environmental Quality (Prescribed Premises) (Scheduled

Wastes Treatment and Disposal Facilities) Order 1989 (PU(A) 140/1989).

9. How does the government derive value from oil and gas resources (royalties/production sharing/taxes)? Are there any special tax deductions or incentives offered?

(a) Section 4 of the PDA provides that, in return for the ownership, rights, powers, liberties and privileges granted to Petronas, Petronas must make cash payments as may be agreed between the federal government and the relevant state governments (as the case may be).

(b) The government also imposes taxes on petroleum operations.

(c) Taxes in the oil and gas sector are chargeable mainly by:

(i) the Petroleum (Income Tax) Act 1967 ("**PITA**"); and

(ii) the Income Tax Act 1967 ("**ITA**").

Tax Regime Applicable to Upstream Operations

(d) In respect of upstream operations, Section 38 of PITA provides that petroleum income tax is chargeable at a rate of 38% of the income of each chargeable person from "petroleum operations".

(e) "Petroleum operations" is defined under Section 2 of the PITA as:

(i) the search for and winning or obtaining of petroleum in Malaysia; and

(ii) any sale or disposal of petroleum so won or obtained, including the transportation of the petroleum to any point of sale, delivery or export.

(f) "Petroleum operations" do not include:

(i) any transportation of petroleum outside Malaysia;

(ii) any process of refining or liquefying petroleum;

(iii) any dealings with products so refined or liquefied; or

(iv) services involving the supply and use of rigs, derricks, ocean tankers and barges.

(g) Section 23(2) of PITA provides that the chargeable income tax in respect of the petroleum operations from the Joint Development Area pursuant to the Malaysia-

Thailand Joint Authority Act 1990 is as follows:

(i) 0% for the first eight years;

(ii) 10% for the next seven years; and

(iii) 20% for the subsequent years of production.

Tax Incentives for Upstream Operations

(h) Tax incentives applicable to petroleum operations include tax exemption for a portion of chargeable income from marginal fields which result in a reduction of the effective tax rate from 38% to 25% for petroleum operations in marginal fields under section 4 of the Petroleum (Income Tax) (Exemption) Order 2013 ("**2013 Exemption Order**"). "Marginal field" is a field that is determined by the Malaysian Minister of Finance as a field in a petroleum agreement area which has potential crude oil reserves not exceeding 30 million stock tank barrels or natural gas reserves not exceeding 500 billion standard cubic feet.

Other Taxes and Duties

(i) The sales and service tax regime comprising the sales tax and service tax (which replaced the goods and services tax regime commencing September 2018), may also be applicable to sale transactions in the upstream oil sector. Sales tax is a single-stage tax imposed on taxable goods manufactured or imported into Malaysia. Service tax is a consumption tax levied and charged on any taxable services provided in Malaysia by a registered person.

(j) The Customs Act 1976 ("**Customs Act**") and its regulations and orders will apply to cross-border sales and deliveries of crude oil. Export duties are generally imposed on Malaysia's main export commodities such as crude petroleum.

(k) Stamp duty is chargeable on instruments in accordance with the Stamp Act 1949. This ranges from RM10.00 to ad-valorem rates.

10. Are there any restrictions on export, local content obligations or domestic supply obligations?

Restrictions on Export

(a) The Customs Act governs, among others, the export of crude oil, natural gas and petroleum products. There are no prohibitions on the export of production of petroleum and natural gas under the Customs Act, however certain classes of petroleum products may

require an export licence. Under the Customs Duties Order 2022, crude petroleum oils are subject to export duties of 10%.

(b) The Control of Supplies (Prohibition on Export) Regulations 2011 provides that no person shall export diesel of more than 20 litres, RON95 petrol, liquid petroleum gas (LPG) and wheat flour to any destination except the manufacturer of such goods with the permission of the Controller of Supply.

Local content obligations

(c) Please refer to paragraph 7 above.

Domestic supply obligations

(d) There are no domestic supply obligations imposed.

11. Does the regulatory regime include any specific decommissioning obligations?

(a) There are no specific decommissioning regulatory framework for decommissioning relating to oil and gas facilities in Peninsular Malaysia and Sabah. The regulatory framework relating to decommissioning of oil and gas facilities is fragmented and found within various statutes such as:

(i) the Fisheries Act 1985;

(ii) the EQA;

(iii) the Continental Shelf Act 1966;

(iv) the Exclusive Economic Zone Act 1984 (“**EEZA**”);

(v) the PSMA; and

(vi) the OSHA.

(b) Given the above, the stakeholders undertaking decommissioning may have to rely on the guidelines issued by the Department of Environment⁷ and Petronas⁸.

(c) In Sarawak, decommissioning of any abandoned petroleum site shall be carried out in accordance with Section 6 and 7 of the Land (Carbon Storage) Rules 2022 (“**Carbon Storage Rules**”).

(d) Under Section 6(1) of the Carbon Storage Rules the petroleum operator shall together with the notice of abandonment submit to the relevant authority a decommissioning plan for approval. Pursuant to Section 6(2) of the Carbon Storage Rules, upon approval, the petroleum operator shall carry out all decommissioning

activities in accordance with the decommissioning plan.

(e) Section 6(5) of the Carbon Storage Rules provides that notwithstanding any handing over of the abandoned petroleum site to the relevant authority, the petroleum operator shall continue to be liable for any residual remains after the decommissioning, including any significant irregularities discovered subsequent to the handing over of the abandoned petroleum site.

(f) Section 7(1) of the Carbon Storage Rules provides that the costs and expenses incurred in relation to the decommissioning of an abandoned petroleum site shall be borne by the petroleum operator. Pursuant to Section 7(2) of the Carbon Storage Rules, where a petroleum operator fails or neglects to decommission an abandoned petroleum site in accordance with the Carbon Storage Rules, the relevant authority may appoint any person to undertake the decommissioning works in accordance with a decommission plan approved by the relevant authority and all costs and expenses so incurred shall be recovered from the petroleum operator as a civil debt, without prejudice to the prosecution of the petroleum operator for an offence under the Carbon Storage Rules.

Footnotes:

7

<https://enviro2.doe.gov.my/ekmc/wp-content/uploads/2019/06/Environmental-Guidelines-for-Decommissioning-of-Oil-and-Gas-Facilities-in-Malaysia-2.pdf>

8

<https://platinum.petronas.com/ppgua/Pages/default.aspx>

12. What is the regulatory regime that applies to the construction and operation of offshore and onshore oil and gas pipelines?

(a) Regulation 5 of the Petroleum (Safety Measures)(Transportation of Petroleum by Pipelines) Regulation 1985 (“**PSM Regulations**”) provides that no person shall install or caused to be installed any pipeline unless he or his authorised representative has obtained a written permission from the Approving Authority (as defined in the PSM Regulations).

(b) Regulation 4(1) of the PSM Regulations requires that all the design, fabrication, installation, testing and the safety aspect of operation and maintenance of petroleum and gas pipeline shall meet the requirements of the American National Standard Institute Code for:

(i) Liquid Petroleum Transportation Piping System

ANSI/ASME B 31.4; or

(ii) Pressure Piping Gas Transmission and Distribution Piping System ANSI/ASME B 31.8.

(c) The Approving Authority may:

(i) ban the use of certain material or fitting or specify the type of fitting in petroleum and gas pipeline system; and

(ii) permit the use of any material fitting, component, method of construction, installation or test procedure which is not prescribed by the Codes mentioned in Regulation 4(1), provided that sufficient evidence is submitted to substitute any claim made regarding the safety of such alternative.

(d) Regulation 6 of the PSM Regulations provides that no person shall operate any pipeline unless he or his authorised representative has obtained a written permission from the Approving Authority. For the purpose of a permission under Regulation 6 of the PSM Regulations, the owner or his authorised representative shall submit:

(i) a letter confirming that the material, design, construction, installation and testing of the pipeline comply with the requirements of Regulation 4 and that the pipelines are safe to be operated;

(ii) a written emergency plan for implementation in the event of system failure, accident or other emergency. The plan shall include procedures for prompt and remedial action providing for the safety of the public and operating company's personnel, minimising property damage, protecting the environment and limiting accident discharge from pipeline; and

(iii) a letter confirming that the operating and maintenance procedures are based on the provisions of the Code stipulated in Regulation 4 of the PSM Regulations or other alternative procedures allowed under Regulation 4(3) of the PSM Regulations.

(e) Subject to complying with the PSMA and PSM Regulations, pursuant to Section 24 of the Gas Supply Act 1993 ("**GSA**"), a licensee is entitled to, whenever it is necessary for the purpose of installing any:

(i) pipeline for the regasification or transportation of gas; or

(ii) pipeline for the distribution of gas or piping system, lay, place or carry on, under or over any land, other than State land, such pipeline or piping system as may be necessary or proper for the purposes of the licence, and may take such other action as may be necessary to

render such pipeline or piping system safe and efficient.

13. What is the regulatory regime that applies to LNG liquefaction and LNG receiving terminals? Are there any such terminals in your jurisdiction?

Regulatory regime for LNG Liquefaction

(a) Natural gas falls within the definition of petroleum under the PDA. LNG Liquefaction may fall within the ambit of "*processing or refining of petroleum*" and this would require a permission under Section 6 of the PDA which provides the Prime Minister's permission is required for any person to carry out:

(i) processing or refining of petroleum; or

(ii) manufacturing of petro-chemical products from petroleum.

(b) The GSA applies to the delivery of gas:

(i) in relation to:

- a. liquefied natural gas, from the connection flange of the loading arm at the regasification terminal;
- b. natural gas received from a gas processing plant or an onshore gas terminal, from the last flange of the gas processing plant or onshore gas terminal; and
- c. natural gas imported into Malaysia through pipelines excluding pipelines upstream of a gas processing plant or an onshore gas terminal, from the international border,

to the transmission or distribution pipelines, or a piping system and to any gas appliance in the premises of a consumer; and

(ii) from the filling connection of a storage tank or cylinder specifically used for reticulation or delivery of gas to any gas appliance in the premises of a consumer.

(c) The GSA also applies to, in respect of safety and technical matters, the delivery of gas to consumers from:

(i) the distribution pipelines or piping system to any gas appliance in the premises of a consumer; or

(ii) the filling connection of a storage tank or cylinder specifically used for reticulation or delivery of gas to any gas appliance in the premises of a consumer.

(d) For completeness, gas is defined under the GSA as

natural gas, liquefied natural gas and liquefied petroleum gas.

LNG receiving terminals

(a) LNG receiving terminals or regasification terminals are governed by the GSA. Section 11 of the GSA provides that no person shall carry out any activity of, among others:

- (i) import into regasification terminal; or
- (ii) regasification of gas,

unless such person is licensed under the GSA.

(b) The regulator i.e. the Energy Commission is conferred the powers and given the duties to, among others:

(i) secure that a licensee authorized by or under this Act to import into regasification terminal, ship or retail gas through pipelines satisfies all reasonable demands for gas;

(ii) ensure that a regasification, transportation or distribution licensee satisfies all reasonable demands for access to the facility;

(iii) ensure that such licensee is able to finance the import into regasification terminal, shipping or retail or the provision of facility of regasification, transportation or distribution of gas;

(iv) enable licensees or other persons to compete effectively in the import into regasification terminal, utilization of regasification terminal, shipping or retail of gas;

(v) promote efficiency and economy on the part of licensees or other persons to import into regasification terminal, utilize a regasification terminal, regasify, ship, transport, distribute, retail or for the use of gas; and

(vi) to enable licensees or other persons to compete effectively in the import into regasification terminal, utilization of regasification terminal, shipping or retail of gas.

(c) Section 5 of the Gas Supply (Amendment) Act 2016 ("**Amendment Act**") amended the GSA to provide the legal framework for the third-party access system ("**TPA System**"), which allows utilisation of existing and future gas infrastructures by multiple parties to import gas into the country. Section 6 of the Amendment Act introduced the Energy Commission as the regulator of the gas industry. The Energy Commission has the power under sections 37B and 37C of the GSA to and has issued

guidelines and codes which licensees must comply with. Pursuant to Section 37 of the GSA, the Energy Commission has issued the Third Party Access Code for Malaysia Regasification Terminals ("**TPA Code for Regasification Terminals**"). The TPA Code for Regasification Terminals has a force of law and any breach would be a breach of the GSA.

(d) The TPA Code for Regasification Terminals applies to:

- (i) regasification licensees;
- (ii) import into regasification terminal licensees;
- (iii) shipping licensees;
- (iv) transportation licensees; and
- (v) a connected party.

(e) There are 2 LNG receiving terminals in Malaysia:

- (i) Regasification Terminal Sungai Udang; and
- (ii) Pengerang LNG import, regasification and re-export terminal in Johor.

14. What is the regulatory regime that applies to gas storage (not LNG)? Are there any gas storage facilities in your jurisdiction?

Please see paragraph 13 above.

15. Is there a gas transmission and distribution system in your jurisdiction? How is gas distribution and transmission infrastructure owned and regulated? Is there a third party access regime?

Please see paragraph 13 above.

Third party access regime for pipelines

(a) Pursuant to sections 37B and 37C of the GSA, the Energy Commission has issued the following:

- (i) TPA Code for Malaysian Transmission Pipelines;
- (ii) TPA Code for Malaysian Distribution Pipelines; and
- (iii) Guidelines on Licence Application.

(b) The above codes and guideline have a force of law and any breach would be a breach of the GSA.

16. Is there a competitive and privatised downstream gas market or is gas supplied to end-customers by one or more incumbent/government-owned suppliers? Can customers choose their supplier?

Pursuant to the GSA, any licensee may distribute and supply gas.

17. How is the downstream gas market regulated?

Please see paragraph 12 to 15 above. Further, the gas market is also regulated by the following regulations.

Processing and Refining of Petroleum and Manufacturing of Petrochemical Products (including natural gas)

(a) Regulation 3A(1) of the Petroleum Regulations provides that application for permission to commence or continue any business of processing or refining of petroleum or manufacture of petrochemical products from petroleum under section 6(1) PDA shall be made to the Secretary-General, Ministry of International Trade and Industry (now known as Ministry of Investment, Trade and Industry ("**MITI**")).

(b) MITI regulates such activities through its agent, the Malaysian Investment Development Authority ("**MIDA**").

(c) MIDA issued a Guideline on Application for Permit under the Petroleum Development Act, 1974 ("**MIDA PDA Guidelines**") which sets out, among others, the eligibility criteria and application procedures for the permission under section 6(1) PDA ("**MIDA PDA Permission**").

(d) In respect of processing, refining and manufacturing activities, MIDA's approval is typically issued alongside the manufacturing licence under the Industrial Co-ordination Act 1975 ("**ICA**") applicable to such activities ("**Manufacturing Licence**"). "Manufacturing activity" is defined as "the making, altering, blending, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal and includes the assembly of parts and ship repairing but shall not include any activity normally associated with retail or wholesale trade". Pursuant to the Industrial Co-ordination (Exemption) (Amendment) Order 1986, the Minister has exempted any manufacturer with shareholders' funds of less than RM2,500,000 and with less than 75 full-time paid employees from the requirement to apply for a Manufacturing Licence.

Marketing and Distribution of Petroleum or Petrochemical Products

(e) Regulation 3A(2) of the Petroleum Regulations provides that application for permission to commence or continue any business of marketing or distributing of petroleum or petrochemical products under section 6(3) of the Act shall be made to the Secretary-General, Ministry of Internal Trade and Consumer Affairs (now known as Ministry of Domestic Trade and Cost of Living ("**MDTCL**")).

(f) MDTCL issued guidelines ("**PDA Guidelines**") which provide the criteria and qualifications required to obtain the Prime Minister's permission pursuant to sections 6(1) and 6(3) PDA ("**MDTCL PDA Permission**"). Under the PDA Guidelines, there are four such categories:

(i) Permission for operation of petrol stations, skid tanks and floating barges ("**MDTCL PDA 1 Permission**");

(ii) Permission for provision of bunkering services in Malaysia ("**MDTCL PDA 2 Permission**");

(iii) Permission for provision of logistics services for petroleum products including transportation activities of petroleum products from a place to another in Malaysia without the involvement of any sale transaction using any vehicle registered for the transportation of petroleum products ("**MDTCL PDA 3 Permission**"); and

(iv) Permission for wholesale marketing and distribution of petroleum products (i.e., which includes fuel oil, gasoline, diesel oil, methane, ammonia nitrate etc.) ("**MDTCL PDA 4 Permission**").

Registration with Petronas to provide downstream services to Petronas' group of companies

(g) Any person who wishes to provide downstream services to Petronas' group of companies are required to register with Petronas and comply with the requirements set out in the Petronas General Guidelines.

Supply of natural gas, LNG and LPG through pipelines to consumers

Please refer to paragraphs 12 to 15 above.

18. Have there been any significant recent changes in government policy and regulation in relation to the oil and gas industry?

Please refer to paragraph 20 below.

19. What key challenges have been identified by the government and/or industry in relation to your jurisdiction's oil and gas industry? In this context, for example, has the Russia/Ukraine war had an impact on the oil and gas industry and if so, how has the government and/or industry responded to it?

Key challenges

In recent years, the Malaysian government issued the National Energy Policy 2022-2040, National Energy Transition Roadmap and Hydrogen Economy and Technology Roadmap, focusing on environmental sustainability, reducing carbon emissions and energy transition. The government recognises that there are challenges in realising such goals. The contributory factors of these challenges are, among others, lack of awareness, lack of regulatory framework and governance, nascent technology status and limited local demand for certain types of energy source.

Russia-Ukraine conflict

Malaysia's oil and gas industry experienced spill over effects from the Russia-Ukraine conflict such as upward pressure of global commodity prices given both Russia and Ukraine are major oil and natural gas producers, which in turn, boosted Malaysian energy exports and contributed to higher fiscal revenues in 2022.

20. Are there any policies or regulatory requirements relating to the oil and gas industry which reflect/implement the global trend towards the low-carbon energy transition? In particular, are there any (i) requirements for the oil and gas industry to reduce their carbon impact; and/or (ii) strategies or proposals relating to (a) the production of hydrogen; or (b) the development of carbon capture and storage facilities?

National Energy Policy

(a) In 2022, the Malaysian government issued the National Energy Policy 2022 – 2040 (“**NEP**”) which charts the way forward and outlines key priorities and action plans for the energy sector in Malaysia. The NEP sets out, in line with global trends, among others, the following objectives:

(i) Carbon emission reduction including GHG emission reduction; and

(ii) Energy transition.

National Energy Transition Roadmap

(b) The National Energy Transition Roadmap (“**NETR**”) was introduced by the Malaysian government with the aim to accelerate the transition to clean energy in line with the National Energy Policy 2022-2040 which lays down the groundwork for the transformational energy landscape.

(c) The NETR identified, among others, the following catalyst projects:

(i) Efficiency switch – the Energy Efficiency and Conservation Bill 2023 (“**EEC Bill**”) was passed in the House of Representatives on 11 Oct 2023 which is intended to regulate energy-intensive users;

(ii) Energy storage – an initiative championed by the National Resources, Environment and Climate Change Energy Commission under the energy storage lever to develop a utility-scale energy storage system allowing for higher penetration of variable renewable energy in Malaysia.

(iii) Green hydrogen – The Sarawak Economic Development Corporation will seek to establish Sarawak as a green hydrogen hub by championing projects for green hydrogen production involving the development of a green hydrogen production plant in Kuching by 2025 for domestic use, and two plants in Bintulu by 2027 for export purposes;

(iv) Biomass demand creation – the NETR introduces an initiative to develop biomass clusters with a centralised plant to potentially improve economies of scale and secure larger and more reliable feedstock. A biomass co-firing initiative involving burning biomass with coal at the existing 2100 MW Tanjung Bin Power Plant is another initiative. Some examples of biomass sources are wood chips, wood and bamboo pellets and rice husks; and

(v) Carbon capture, utilisation and storage (“**CCUS**”) and Carbon capture and storage (“**CCS**”) – the Ministry of Economy and Petronas will develop a framework to facilitate the implementation of CCUS projects and Petronas will champion the implementation of CCS projects for high-carbon dioxide gas fields.

Hydrogen Economy and Technology Roadmap

(d) The Hydrogen Economy and Technology Roadmap (“**HETR**”) was launched on 5 October 2023, which was

intended to be a supporting document to the National Energy Policy 2022-2024, which envisages the development of a hydrogen economy in Malaysia. The HETR sets the vision for Malaysia to be a leading Hydrogen Economy country by 2050 while achieving the world's decarbonisation targets.

(e) To realise the vision for Malaysia to be a leading nation in Hydrogen Economy by 2050, the HETR sets 3 goals for Malaysia:

(i) Hydrogen to be the cornerstone of a new energy economy in Malaysia, with Malaysia establishing a strong presence globally with respect to the hydrogen supply chain.

(ii) Malaysia to achieve a sustainable energy mix through the diversification of energy sources and increasing the share of clean energy in the country's energy mix by promoting the use of hydrogen in energy storage and as a fuel in combined cycle gas turbines, to create a hydrogen demand.

Energy Efficiency and Conservation Bill 2023

(f) The House of Representatives of the Malaysian Parliament passed the EEC Bill on 11 October 2023 which aims to regulate the efficient consumption of energy and conservation of energy with the aim to improve and increase energy efficiency and to avoid waste of energy. It primarily focuses on heavy energy consumers within the industrial and commercial sectors, office buildings and energy-using products.

(g) If the EEC Bill is passed by the Senate, receives Royal Assent and is gazetted as is, pursuant to Section 4 of the EEC Bill, the Energy Commission ("EC") will be conferred regulatory functions under the EEC Bill and have, among others, the following powers:

(i) to promote, develop or implement policies and initiatives relating to energy efficiency and conservation;

(ii) to devise the nature of test to be employed and to recommend to the Minister the minimum qualifications and practical experience for any purpose pursuant to this Act; and

(iii) to set targets and ensure compliance for such targets for the improvement in energy efficiency and conservation.

(h) Persons falling within the definition of "energy consumer" under the EEC Bill and to whom the Energy Commission issued a written notice notifying that he is an energy consumer will be required to adhere to, among others, the following compliance requirements:

(i) Appoint an energy manager registered with the EC to manage energy efficiency and conservation of the energy consumer;

(ii) Develop and implement an energy management system in accordance with EC guidelines;

(iii) Submit an energy efficiency and conservation report to the EC, which includes a description of the energy management system implemented, details on the total amount and purpose of consumption of energy, and proposed measures for improving energy efficiency and conservation;

(iv) Allow periodic energy audit by a registered energy auditor for the purposes of submitting an energy audit report to the EC. If the EC is satisfied that the energy consumer has significantly improved its energy efficiency after the first energy audit, the company may be exempted from subsequent audits.

(i) The EEC Bill also seeks to impose the following obligations on "persons in charge of a building" i.e. the owner of an office building or any other person having the charge, management or control of a building or premise where energy specified in Schedule 2 of the EEC Bill, namely electricity, chilled water, steam and hot water is consumed:

(i) Obtain an energy intensity label from the EC for display within in the building, which serves as an indicator to the energy efficiency of the office building.

(ii) Ensure that the energy intensity performance of its buildings comply with the energy efficiency ratings prescribed by the EC. Failure to meet these ratings will compel the owners to:

1. appoint an energy auditor to conduct an energy audit on the building and submit an energy report to the EC; and
2. develop and implement an energy efficiency improvement plan for the building, subject to EC approval.

(j) An "energy-using product" is defined under the EEC Bill as any equipment, device, appliance or article which uses energy or energy resources. Products falling within this definition are subject to the following requirements:

(i) energy-using products will now require a certificate of energy efficiency ("**Certificate**") and an energy efficiency rating label ("**Label**") issued by the EC before they can be distributed, sold or advertised;

(ii) products must conform to EC guidelines and meet minimum energy performance standards before

receiving the requisite Certificates and Labels, which is required to be renewed annually; and

(iii) manufacturers or importers must be registered with the EC before engaging in the manufacturing or importing of energy-using products.

Sarawak Environment (Reduction of Greenhouse Gases Emission) Ordinance 2023

(k) The Sarawak Environment (Reduction of Greenhouse Gases Emission) Ordinance 2023 ("**Ordinance**") was enacted by the Sarawak State legislature gazetted on 22 December 2023 for the "*protection of the Environment in Sarawak by reduction or abatement of emission of greenhouse gases into the atmosphere, adoption of strategies towards net zero carbon emissions, low carbon solutions and the transition towards clean renewable energy.*" It is to be noted that the Ordinance only applies to the State of Sarawak.

(l) The Ordinance introduced, among others, the following requirements and/or restrictions:

(i) the requirement of registration of persons or business entities undertaking the following activities:

1. oil and gas sector: exploration, production and processing of petroleum or gas whether on-shore or offshore Sarawak and all activities related to carbon capture and storage;
2. energy sector: generation, production and transmission of electricity; and
3. other economic sectors as the Sarawak State Council may determine by notification published in the Gazette,

(collectively, "Scheduled Economic Activities");

(ii) submission of a carbon emission report resulting from the activities undertaken by persons carrying out Scheduled Economic Activities;

(iii) carbon emission level of a registered business entity must not exceed the carbon emission threshold determined by the State Council by notification in the Gazette; and

(iv) restriction on flaring and venting of petroleum or greenhouse gases in Sarawak without the consent of the Controller of Environmental Quality Sarawak in writing.

(m) The Ordinance also provides for the entitlement to Carbon Credit Units of any person undertaking, among others, the following activities or projects in Sarawak:

(i) carbon capture and use or captured carbon dioxide for other applications or in the making of other products;

(ii) permanent storage of carbon dioxide at storage sites approved under the Carbon Storage Rules (as defined below);

(iii) the direct capture or removal of carbon dioxide from the atmosphere in accordance with the rules made hereunder;

(iv) forests carbon activities under the Forests (Forest Carbon Activity) Rules (as defined below); and

(v) projects reducing energy consumption or using low carbon solutions including solar or wind energy and measures to be adopted to reduce electricity consumption and improve energy performance ratings in non-domestic buildings or dwellings, to reduce or abate carbon emission.

Sarawak Land (Carbon Storage) Rules 2022

(n) The Sarawak Land (Carbon Storage) Rules 2022 ("Carbon Storage Rules") was enacted by the Sarawak state legislature pursuant to Section 213(m) of the Sarawak Land Code and came into force on 1 January 2023. The Carbon Storage Rules governs the storage of "atmospheric carbon dioxide and any other greenhouse gases the reduction of emission, capture or storage whereof, is needed to mitigate effects of global climate change, and any incidental substances or trace substances which may be injected into a storage site", or otherwise defined under the Carbon Storage Rules as "scheduled gases". The Carbon Storage Rules, like the Ordinance, only applies to the state of Sarawak.

(o) The Carbon Storage Rules sets out, among others:

(i) the categories of land where storage i.e. the depositing, dumping, sequestration or retention of scheduled gases in secured conditions is permitted;

(ii) decommissioning obligations of a petroleum operator in Sarawak (see paragraph above);

(iii) the requirement for a licence to use, appraise, explore, develop, occupy or be in possession of onshore land or offshore land for carbon storage;

(iv) requirement of a storage permit to use any land for the storage of scheduled gases; and

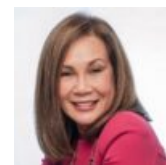
(v) powers and duties of the regulatory authority i.e. the State Planning Authority under the Sarawak Land Code.

Contributors

Kamilah binti Kasim

**Partner and Head of the Firm's
Energy, Infrastructure & Projects
Department**

kamilah.kasim@rahmatlim.com



Phua Syuen Yue
Associate

phua.syuenyue@rahmatlim.com