



MEMORANDUM TO CLIENTS

OIL AND GAS

May 26, 2017

6 Topics You Should be Aware of for ANP Round 14

In view of the recently released preliminary tender documents for the 14th Bid Round for the concession of the rights to explore and produce oil and natural gas in Brazil, please find below our review of such preliminary tender documents, in which we highlight the following:

- (a) how to access the data package;
- (b) bidding criteria;
- (c) single exploration period;
- (d) royalty rates;
- (e) local content; and
- (f) arbitration.

➤ **How to access the data package**

ANP Round 14 will include 287 blocks in the Campos, Espírito Santo, Paraná, Parnaíba, Pelotas, Potiguar, Recôncavo, Santos and Sergipe-Alagoas basins. For each sector, ANP has made available virtual data packages, including seismic data, maps, public well data, magnetometry and gravimetry data and general information on specific wells.

Companies will have access to these data packages after having: (i) registered online for ANP Round 14 at [here](#); (ii) paid the participation fee applicable to the relevant sector; and (iii) delivered the confidentiality agreement (in accordance with ANP's non-negotiable template).

➤ **Bidding criteria**

Bids must be made solely on the basis of the signature bonus and minimum exploratory program ("PEM"). The signature bonus represents 80% of the offer and the PEM represents the remaining 20%. Local content commitment is now fixed and no longer a bid criterion.

➤ **Single exploration period**

The exploration phase is no longer divided into two periods. It is now composed of a single period ranging from 5 to 7 years, depending on the area in which the block is located. Additionally, compared to previous concession contracts which included a well commitment in the second exploratory period, there is no longer a specific drilling commitment during the exploration phase.

➤ **Royalty rates**

For onshore blocks in the Espírito Santo, Potiguar, Recôncavo and Sergipe Alagoas basins, the royalty rate will be 7.5%. For the blocks in the Paraná (onshore) and Pelotas (offshore) basins, the royalty rate will be 5%. Please note that if the production in any of these blocks triggers a special participation payment, the applicable royalty rates will be increased to 10%.

Additionally, please note that the ANP may reduce the royalty rate to 5%, which will apply over the incremental production resulting from new investments agreed for the extension of the contracts during the production phase.

➤ **Local content**

Specific local content items and sub-items were replaced by global and macro group local content commitments, depending on the location and phase of the concession. The minimum local content requirements ("Minimum Local Content"), expressed as a percentage, are listed below:

- Onshore:
 - Exploration: 50%
 - Development: 50%

- Offshore:
 - Exploration: 18%
 - Development:
 - 25% for well construction
 - 40% for collecting flow system
 - 25% for stationary production units



A penalty will be imposed in the event of non-compliance with Minimum Local Content. However, the maximum penalty applicable has been decreased from 100% to 75% of the value of the Minimum Local Content, as explained below.

- (i) If the shortfall in the required Minimum Local Content ("Minimum Local Content Shortfall") is less than 65% of the required Minimum Local Content, the penalty will be 40% of the value of the Minimum Local Content Shortfall.
- (ii) If the Minimum Local Content Shortfall is equal to, or exceeds, 65% of the required Minimum Local Content, the penalty will be proportionately increased, starting from 40% up to a maximum penalty (where the Minimum Local Content Shortfall is 100%) of 75% of the value of the required Minimum Local Content.

Please note that the ANP changed the basis of calculation of the fines applicable where the Minimum Local Content Shortfall is in the range from 65% to 100%. While, in previous contracts, the fine was calculated as a percentage of the Minimum Local Content Shortfall, pursuant to this new wording the new fine (including that applicable in the range from 65% to 99%) will be calculated as a percentage of the required Minimum Local Content. Further clarification may be necessary as to whether or not this was indeed intentional.

ANP finally clarified that expenses relating to operational rates for production units shall not be included in the calculation of Minimum Local Content.

➤ **Arbitration**

Arbitration in respect of concession contracts is limited to "transferable patrimonial rights" (*direitos patrimoniais disponíveis*) pursuant to the Brazilian Arbitration Act. Previously, the ANP had created a restriction as to the range of disputes which could be resolved by means of arbitration, by including the definition of "transferable patrimonial rights" in the concession contracts. However, the ANP has now excluded this definition, which means that, in principle, such contractual restriction on what may be settled by means of arbitration no longer exists.



Please note that the question of whether or not disputes arising under a concession contract may be subject to arbitration is currently the subject of proceedings before the Brazilian Superior Court of Justice (STJ) in a claim between Petrobras and the ANP.

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The purpose of this memorandum is to inform our clients about important changes and developments in the area of law. We remain at the reader's disposal for any additional information that may be desired regarding the subject matter herein.

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