

The Decommissioning Framework in Malaysia

Fariz Aziz and Jeralyn Kan examine the decommissioning framework in Malaysia, the United Kingdom and Australia

Introduction

According to energy research and consultancy firm Wood Mackenzie, nearly 2,600 platforms and 3,500 wells in more than 380 fields in Asia Pacific are expected to cease production in the next decade. At home, our national oil company, Petroliaam Nasional Berhad (“PETRONAS”) has also identified decommissioning as a rapidly developing market sector in the oil and gas industry with over 300 platforms in the country of which a considerable number have been operating for more than 40 years.

This article seeks to examine the state of the current legal framework for decommissioning of offshore oil and gas facilities in Malaysia and contrasts it with the decommissioning practices in the United Kingdom (“the UK”) and Australia.

What is Decommissioning?

Briefly, in the context of the oil and gas industry, decommissioning is an activity to restore a previously operating facility to a safe and environmentally stable condition which includes: well abandonment, which is the preparation of a well to be permanently closed; and upstream facilities decommissioning, which is to permanently make safe platforms and other facilities used.

Regulatory Framework on Decommissioning in Malaysia

Currently, the domestic regulatory framework relating to decommissioning of offshore oil and gas facilities is fragmented and found within various statutes such as the Fisheries Act 1985, the Environmental Quality Act 1974, Continental Shelf Act 1966, Exclusive Economic Zone Act 1984 (“the EEZA”), Petroleum (Safety Measures) Act 1984 and Occupational Safety and Health Act 1994 and various other regulations and subsidiary legislation. The Department of Environment has also issued environmental guidelines for the decommissioning of oil and gas facilities in Malaysia.

As a direct result of this fragmentation, a party seeking to undertake a decommissioning project is required to navigate the requirements of various regulators for the purposes of obtaining approvals and complying with regulatory processes required by law giving rise to the issue of potential conflicting stakeholder interests. PETRONAS has fortunately taken the active step of issuing the decommissioning guidelines as part of its PETRONAS Procedures and Guidelines for Upstream Activities (“PPGUA”) which are required to be complied with by parties to production sharing contracts (“PSC”) with PETRONAS in Malaysia.

Under PPGUA, all aspects of decommissioning undertaken by parties to PSCs with PETRONAS (“PSC Contractors”) are subject to review and approval by PETRONAS under the abandonment review framework and the Government of Malaysia. The Government will provide its approval through the *Jawatankuasa Kerja Zon Ekonomi Eksklusif* (“JKZEE”) pursuant to Sections 21(1) and 22 of the EEZA for installations operating within the Exclusive Economic Zone. Abandonment Plan approval from PETRONAS is required before making an application to the JKZEE. PPGUA also requires that a decommissioning plan be submitted to PETRONAS during the field development stage.

Further, there is an emphasis on Health, Safety and Environment (“HSE”) matters whereby PETRONAS will be updated monthly on the HSE performance of the decommissioning project. Upon completion of all decommissioning works, debris are to be properly disposed of in accordance with the legal instrument between PETRONAS and the contractors. A post decommissioning environmental survey is usually conducted within a few months from the date of completion of the

decommissioning works to ensure that there is no adverse impact on the surrounding marine and land environment.

Whilst PPGUA provides a workable framework at present for PSC Contractors, it remains to be seen whether this is sufficient in view of the expected volume and sophistication of decommissioning projects to be undertaken in the future. Furthermore, as a large number of decommissioning projects are likely to be the legal responsibility of PETRONAS (rather than PSC Contractors), introducing a specific decommissioning legislative framework or at least a committee comprising all relevant stakeholders with sufficient oversight authority independent from PETRONAS should be considered.

Options for Decommissioning in Malaysia

Broadly speaking, the options available for decommissioning depends on the type of installation to be decommissioned. For example, platform decommissioning would require different options from that of pipeline decommissioning. The current practice in Malaysia is that all disused upstream installations are required to be fully removed, except where non-removal or partial removal is proved to be more suitable. Decommissioning projects are to be evaluated on a case by case basis to ensure that the right options are undertaken. To that end, PETRONAS has implemented the rig-to-reef option on some of its offshore platforms in 2017 whereby platform structures are turned into artificial reefs.

Associated with the above is the absence of any form of standard decommissioning contract for decommissioning work in Malaysia, an issue generally faced by the industry globally. At the time of writing, the Oil and Gas UK's decommissioning working group has produced a new LOGIC decommissioning contract with guidance notes which parties operating in the UK are able to use for the dismantling, removal and transport to shore of all types of offshore infrastructure.

In addition to the above, the Baltic and International Maritime Council (BIMCO), a large international shipping industry association, is also currently producing a decommissioning contract for the benefit of its members. These initiatives could prove to be of assistance when crafting a contract to be used in Malaysia (depending on the type of decommissioning work to be undertaken) but will need to take into account certain realities of the Malaysian regime, particularly the issue of title to PSC assets, the method of withdrawing from the abandonment cess fund, the upstream services oil and gas licensing regime and Malaysian foreign exchange control restrictions.

Issues with the Existing Decommissioning Practice in Malaysia

The following are some of the significant issues that arise from the existing decommissioning practices in Malaysia:

- (a) unclear and inaccessible regulations and guidelines;
- (b) general lack of experience in the region leading to weak decommissioning plans;
- (c) lack of literature and unpredicted effects of decommissioning on marine fauna and flora;
- (d) risks to the health and safety of both the personnel performing decommissioning operations and other sea users;
- (e) as most of the structures are more than 40 years, records of these structures may not be sufficiently kept; and
- (f) shortage of historical precedent to benchmark against to determine the expected costs of decommissioning.

The Decommissioning Regime in the UK

The decommissioning landscape in the UK is sophisticated and service providers and operators are generally familiar with the process. The decommissioning of oil and gas assets in the UK is governed primarily by the Petroleum Act 1988. In addition, there is a dedicated website by the Oil and Gas Authority supplemented by extensive guidance notes and literature on decommissioning.

The availability of guidance notes, legislation and regulatory framework dedicated to the

decommissioning practice in the UK ensures that operators receive detailed guidance on administrative procedures leading up to the decommissioning works. The framework requires, amongst others, the submission for approval of detailed estimated costs, assessments on environmental impact and other continuing monitoring obligations.

Further, the UK's policies and practices on decommissioning are based on two key principles, the first being the precautionary principle that decommissioning should always aim to achieve a clear sea bed (complete removal of infrastructure remains the base case decommissioning requirement), and the second principle, the polluter pays principle, whereby those who have benefitted from the exploitation or production of hydrocarbons bears the responsibility for decommissioning. The latter involves carry back liability, which means that removal and environmental liability costs can be shared back along the chain of users, owners and licence holders from the time of the original installation until its decommissioning.

The UK's Oil and Gas Authority was established pursuant to the Energy Act 2016 to advise on, amongst others, the costs of carrying out the decommissioning programme and how to keep the costs to a minimum. This establishment is helpful as operators can consult industry experts for cost management advice. In addition, the UK focuses on ensuring that the industry is in possession of transparent data around cost estimates, uncertainty ranges, execution methodologies and best practices to achieve cost certainty. This concept of a transfer of knowledge in a transparent manner will be a useful addition in Malaysia to decrease high decommissioning costs as there is a lack of historical precedent and data in relation to the costs of decommissioning in Malaysia.

Most interestingly, the UK has put in place a mandatory planning tool called the 'comparative assessment' to determine the most suitable decommissioning options to undertake. The comparative assessment narrows down suitable decommissioning options by using yardsticks such as safety risks, environmental impacts, technical feasibility, societal impacts and economic costs against which the options are assessed. According to an [industry publication](#), the planning tool helps deliver best practice while complying with regulatory requirements. The tool is also scalable, which makes it versatile for projects of all sizes.

The Decommissioning Regime in Australia

Currently the regulatory regime in place in Australia regulating decommissioning practices is set out in the Offshore Petroleum and Greenhouse Gas Storage Act 2006, its regulations and the Commonwealth Offshore Petroleum Decommissioning Guideline.

Australia has recently launched a review of its decommissioning framework in preparation of predicted increase in decommissioning activities in the coming years. A detailed Decommissioning Paper has been issued and following on from that, an Options Paper detailing the preferred proposed options to enhance the decommissioning framework will be released sometime towards the end of 2019.

Preliminarily, the six key principles that underpin the current regime in Australia are as follows:

- (a) the petroleum industry is regulated under a broad objective and performance-based scheme that permits the titleholders to discharge their obligations in a manner that suits their individual circumstances;
- (b) decommissioning is conducted in a way that reduces any environmental, safety and well integrity risks;
- (c) decommissioning and the associated costs are the responsibility of the titleholders who have operated or installed the infrastructure;
- (d) decommissioning should be considered early and often, as early as from project development as part of concept selection and design;
- (e) complete removal is the "base case" for any decommissioning operation, together with plugging and abandonment of wells though other options such as partial removal, repurposing and reusing of property may be undertaken if the titleholder can demonstrate that the alternative approach will yield better environmental, safety and well integrity outcomes; and

- (f) decommissioning must be completed before end of title to ensure that the onus for carrying out such works does not fall on the Australian government, and therefore Australian taxpayers.

There is a strong policy similar to the “polluter pays” regime in the UK in that titleholders who have been permitted to install infrastructure in offshore areas are expected to bear all forms of legal responsibility associated with the infrastructure.

An interesting facet of the current Australian framework is the ability of the National Offshore Petroleum Safety and Environmental Management Authority to issue remedial directions to current and former titleholders to perform certain limited remedial actions such as to remove, all property brought into the title area by any person engaged or concerned in operations authorised by the titleholder. However, there are certain limitations with regards to remedial directions to former titleholders in that the remedial direction may not be issued to the former titleholder if the title has been surrendered or where the former titleholder has transferred its interest in the title.

The Minister also has power to issue remedial directions, but the scope of power is limited to directions which relate to resource management or resource security. One of the proposals in the Decommissioning Paper is for this power to be enhanced to ensure that a former titleholder operating under a remedial direction is subject to all the duties and responsibilities as if it were operating under its previous title.

It also appears from the Decommissioning Paper that the Australian government has recognised the value of developing a Comparative Assessment Guidelines, similar to the ‘comparative assessment tool’ developed in the UK.

Conclusion

The regime in the UK and Australia are detailed yet flexible and some aspects could be considered to address the issues present in the current regime in Malaysia, in particular, making available historical decommissioning data in order for the industry to be in a better position to develop decommissioning strategies.

Ultimately, the optimal decommissioning solution will depend on what is technically feasible and also what is desirable from an environmental, economic and societal perspective. Decommissioning in Malaysian territorial waters and its Exclusive Economic Zone will require a balance of learning from best practices in other jurisdictions, but also recognition of challenges unique to our local situation.

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