

# **Recent Legal Developments in the Oil & Gas Sector and the Main Challenges for the Industry in 2015**

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# Outline

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## 1. Legal Developments in the Oil and Gas Sector

- ✓ Main Legislative Developments in 2014
- ✓ Draft Legislation for the Oil and Gas Sector

## 2. Challenges for the Industry in 2015

- ✓ Global and Local Environment
- ✓ What Will Drive the Market in 2015?
- ✓ Impact on Oil and Gas Companies
- ✓ Reducing Financial Exposure in Current Projects
- ✓ M&A Opportunities

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# 1. Legal Developments in the Oil and Gas Sector

# Main Legislative Developments in 2014

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- **GEO no. 22/2014**: Clarifications Regarding the Issuance of Building Permits for Carrying Out Onshore Petroleum Operations (**14 May 2014**)
- **Law no. 127/2014**: New Rules on Petroleum Transport Systems and on Petroleum Royalties (**4 October 2014**)
- **GEO no. 80/2014**: Extension of the Application of certain Legal Enactments (**12 December 2014**)
- **Law no. 11/2015**: Decrease of the tax on special constructions (**16 January 2015**)

# Draft Legislation for the Oil & Gas Sector (1/4)

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- **Review of the E&P Taxation System**

- Over the previous years there was intensive public debate regarding the taxation of the E&P Sector
- Government of Romania intends to put in place a new taxation system starting from 1 January 2016
- The general trend: additional tax (“petroleum tax”) on ring fenced profits.
- The temporary “special” taxation will cease to be applicable from the date of entry into force of the new “petroleum tax”.

# Draft Legislation for the Oil & Gas Sector (2/4)

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- **Safety of Offshore Oil and Gas Operations**
  - Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC – Deadline for transposition: **19 July 2015**. No draft bill released yet.
  - In March 2013, the European Commission, Council and European Parliament reached political agreement on a new directive seeking to address the **risk of major accidents** from offshore oil and gas operations in EU waters.
  - The Offshore Safety Directive will apply to **existing and future** installations and operations.

# Draft Legislation for the Oil & Gas Sector (3/4)

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- **Romania's Energy Strategy**

- On 5 December 2014, the Department for Energy within the Government of Romania (which became the Ministry for Energy, SMEs and Business Environment) released a first draft of Romania's Energy Strategy.
- The document addresses at a **general level** the energy sector. No recent follow-ups from the Ministry.

# Draft Legislation for the Oil & Gas Sector (4/4)

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- **Public Procurement in the Utilities Sector**
  - Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC – Deadline for implementation: **18 April 2016**. No draft bill released yet, but the relevant authority intends to release this year the initial version (for public debate) of the legislation implementing the new EU public procurement package (including Directive 2014/25/EU).
  - Recital (25): “*It is appropriate to **exclude procurement made for the purpose of exploring for oil and gas** as that sector has consistently been found to be subject to such competitive pressure that the procurement discipline brought about by the Union procurement rules is no longer needed*”.
  - **Exemption decision** (for “extracting oil and gas”) to be pursued after the approval of the new legislation.

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# 2. Challenges for the Industry in 2015

# Global and Local Environment

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- Globally, the industry is facing a “**perfect storm**”?
  - geo-political instability in the Middle East and in the Ukraine
  - USA becoming the world’s largest oil producer
  - OPEC refusing to cut production in an effort to safeguard their market share
- Result: **crash of oil prices**
- Widespread industry **confusion**: short-term crash / the “new normal” / prices to fall even more?

# What Will Drive the Market in 2015?

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**Consequences at global scale** of the current environment:

Positive impact:

- stimulus for the global economy (reduction of costs)

Negative impacts:

- Lower upstream oil investments
- Pressure on costs
- Tightened access to capital

▪ **Romanian oil and gas industry** in 2015:

- Round 11 and (a potential) Round 12
- Shale gas – no longer a priority?

# Impact on Oil and Gas Companies

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- Reallocation of resources to focus on high return activities
  - Abandoning underperforming and lower yield assets
  - Opportunistic acquisitions of under-valued assets
  - Pursuing joint ventures to share capital and risk
- **Trends:**
    - M&As driven by companies with strong financials
    - Consolidation trend for oilfield services companies
  - The current environment presents both **risks and opportunities** for players of all sizes and for all market segments.

# Reducing Financial Exposure in Current Projects

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- Analysis whether or not the project can be **economic with the current oil prices**. If the conclusion is that the project is uneconomical, difficult decisions need to be made.
- Understanding **legal and financial effect of terminating contracts**:
  - Check what the termination rights allow;
  - Careful consideration: risk of terminating the contract wrongfully vs. losses that could ultimately arise from pursuing the project.
- Potential **strategies**:
  - Relying on **Force Majeure** provisions? Issue: Changes in economic conditions are usually exempt from the scope of Force Majeure;
  - **Hardship**? Under Romanian law: applicable, in principle, for contracts concluded after 1 October 2011 (entry into force of the new Civil code).
  - By taking **early legal advice**, termination can be properly managed so as to minimize potential exposure to claims.
  - Involving skilled **litigators/arbitrators** as early as possible if the dispute has arisen or is about to arise.

# M&A Opportunities

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- M&A activity to increase as companies with strong balance sheets may take the **opportunity to acquire distressed companies** to gain access to potentially valuable assets at a discount.
- Risks for purchasers:
  - Temptation to accelerate, or even reduce the scope of, the **due diligence**;
  - Time and expense saved could ultimately result in a substantial cost if the purchaser ends up acquiring a company with **hidden problems**.
- Risks for sellers:
  - **Poor preparation** for the sale (e.g. environmental liability issues; outstanding litigation claims; policies improperly implemented etc.)
  - **Due diligence enquiries** improperly handled, which may lead to breach of warranty claims.
- Recommendations:
  - Purchasers should thoroughly assess the scope of due diligence (legal, environmental, financial, HR etc.)
  - Sellers should timely prepare for the sale with vendor's due diligence.

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