

## Chapter 4

# Effective Regulatory Framework for FDPs

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This chapter outlines the key elements for a robust regulatory framework for FDPs and considers the policy and legal frameworks among the key regulatory tools used by the government to guide management and development of the sector. It is one of the key factors that will influence the company's choice of how to develop the field (Figure 1.3).

*Caveat: Please note that each country's regulatory framework must be reflective of its own national context, objectives, laws, institutional framework and capacities. The formulation of national policy and legal framework must be done in a comprehensive manner which requires specialists to diagnose elements of the existing framework (legal, fiscal, operational, environmental etc.) and make recommendations that are context appropriate. This chapter must not be seen as a substitute for this type of work and is primarily intended to identify some critical areas related to the FDP.*

### 4.1 Policy framework checklist

Well-developed petroleum policies provide investors and the public with a clear statement of the government's long-term vision and guides how activities in the sector should be conducted. The strategic direction for the sector is usually addressed in documents such as the National Oil and Gas Policy, Gas Master Plan, Local Content Policy. These policies will outline the context, legal and institutional arrangements, key issues and the government's objectives.

To provide an effective overarching governance structure, policy positions must be realistic, coherent with other policies and laws and create clear linkages on how the sector is expected to contribute to the achievement of national development objectives.

These will clearly have an impact on new oil and gas projects – hence the FDP.

**The government, as the resource owner, must ensure there is effective communication on key policy matters to the operator early in the Appraise phase.** This is crucial to establish framing conditions for the company's appraisal and development strategies – *for the field and broader discovery area.*

In instances where there are no explicit national strategies and policies to inform FDP activities, *it is even more important* that the government provides guidance to companies on its expectations from the sector in a timely manner. Without such framing conditions, the company's preferred development solution may not optimally address certain issues.

The discussion with the operator on the policy framework as it relates to the FDP should cover the areas shown in Table 4.1.

**Table 4.1 Key policy areas that impact FDPs**

WHAT?	WHY?
<p>Guiding principles</p>	<p><b>Set expectations on the principles the FDP should be based on, which will inform decisions and interactions among stakeholders.</b></p> <p>A principled approach can set the government's expectations and form a useful basis for dealing with matters related to the FDP, for both companies and the public. Some commonly used principles, which prudent competent companies would already be operating under, include:</p> <ul style="list-style-type: none"> <li>– Precautionary principle: where there are threats of serious or irreversible harm to society or the environment, the lack of full scientific certainty regarding the extent of that damage should not be used as a reason for not including measures in the FDP to prevent or minimize such potential adverse effects.</li> <li>– Public participation: A participatory approach often builds stakeholder confidence and is of particular significance for Indigenous Groups such as Free Prior Informed Consent. The FDP should consider and plan for public consultations.</li> <li>– Transparency and accountability: The underlying assumptions and expected risks and benefits from the project should be available to relevant stakeholders in a timely manner. The FDP approval should be carried out in a clear, transparent process with sufficient checks and balance in the system to protect the country's interests.</li> <li>– Collaborative approach: There will be differences, and therefore solutions to optimise the net benefits to both the country and company requires both parties to work together.</li> </ul> <p><b>To provide clarity on the roles of various government agencies as they relate to the FDP approval and project progression to first production.</b></p>
<p>Institutional arrangements</p>	<p>Highlights potential areas the company may have not considered (e.g. various government approvals required during the construction phase) and incorporate into the project schedule. This supports effective coordination, communication and information sharing between the company and government.</p> <p>It would also serve to highlight where intra-government coordination is required.</p>

Government's policy objectives and priorities

**To provide guidance to the company on the factors which should inform the development concepts being contemplated for the field. This should aid in early identification of issues and challenges specific to the FDP, particularly given different time horizons and interests between the government and company. Should allow for collaboration between parties for mutually acceptable solutions for the project.**

Government policy objectives will vary depending on national context. Generally, they often include:

- Ensuring sustainable development of petroleum resources
- Ensuring the regulatory framework is consistent with international best practice
- Creating a competitive environment for attracting and sustaining investments
- Maximising economic recovery of petroleum resources
- Maximising the benefits for present and future generations
- The role of the state including state participation
- Promoting third-party access to infrastructure on fair and reasonable terms
- Ensuring safety
- Preserving and protecting the environment
- Local content (please see below)
- Capacity building

Local content

**To set the government's expectations for local content and facilitate mutually acceptable solutions for the project on employment, local goods and services etc.**

The objective of Local Content Policies (LCPs) is to ensure the sector brings benefits to communities and the national economy through employment, use of local goods and services and local participation in the value chain.

However, without analysis and a strategic approach to inform the focus areas and pace of adoption, the objectives of LCPs may not be realised. On one hand, opportunities for local content may be missed if not properly analysed or considered on a wider industry approach. And on the other, unrealistic targets may lead to schedule delays, higher costs and lower investment compromising the viability of the industry.

The scale of the opportunity for local business contracts and jobs increases as a project moves from the exploration phase through to production and should be carefully considered in the FDP; in particular, procurement strategies, organisation structure and manpower planning.

(Continued)

**Table 4.1 (Continued)**

WHAT?	WHY?
<p>Role of the oil and gas sector in domestic energy and its contribution to NDCs</p>	<p><b>To ensure the FDP is aligned with the country's energy policy and Nationally Determined Contributions (NDCs).</b></p> <p>NDCs are international commitments made under the Paris Agreement including mitigation and adaptation efforts. Every country based on their own national context, circumstances, capabilities, and priorities submitted plans for reducing global greenhouse gas (GHG) emissions. As the energy sector is a key contributor to GHG, the NDCs should be aligned to the country's energy policy which would describe the future energy demand of the country (e.g. transport, industry and power needs) and how that demand is anticipated to be met (i.e. oil, gas, coal, renewable energy or nuclear power). The intended energy supply/energy mix would outline the contribution from various energy sources including from indigenous supply. It will be important for government agencies to have a clear and integrated view of the country's energy policy, NDCs and the role of the oil and gas sector. For example, misalignment could arise if the NDC commits to 100% renewable energy by 2040 but given significant discoveries, gas power is being developed.</p> <p>A field's development will therefore have serious implications for the country's energy mix and NDC through areas which raise questions, such as:</p> <ul style="list-style-type: none"> <li>i Will monetisation be via export or domestic markets? Will gas be used for domestic power? Will crude be refined in country?</li> <li>ii How will the project's GHG footprint be minimised? For example, are operations powered by renewable energy (vs oil and gas)? Is the design and operations of facilities based on zero routine flaring and venting?</li> <li>iii How will the project design incorporate effective monitoring reporting and validation of GHG emissions as part of its environmental management systems?</li> </ul>

## 4.2 Legal framework checklist

The legal framework consists of the laws, regulations and contracts that govern operations and interactions in the petroleum sector. Sector-specific instruments are the Petroleum Act, Petroleum Regulations and Petroleum Agreements (e.g. concessions, production-sharing contracts). There are several cross-cutting aspects which will be addressed in other sectors. For example, laws and regulations that relate to state enterprises, environment, taxation, local content, labour, health and safety.

A robust legal setting gives weight to government strategies and policies. It would also ensure that the industry is developed in accordance with best international practice. Please note that for effective petroleum sector governance the legal framework covers the broad spectrum of administration, operational, environment, health, social and fiscal matters across the entirety of the petroleum life cycle i.e exploration, development, production and decommissioning. The FDP is an extremely narrow aspect of sector governance.

**This section provides *guidance only on procedural matters related to the regulatory approval of the FDP*.** Broader legal framework issues are outside the scope of this handbook.

Checklist for legal framework

The checklist below is intended to be used as a guide for testing the robustness of the existing requirements related to the FDP. Depending on the circumstances and the needs, the checklist can serve different purposes including supporting legal reform and improving governance. A supporting excel template is included in the toolkit to aid in assessing the robustness of the existing FDP legal requirements. (please see [Appendix C](#))

The legal framework should address the following:

### (1) Discovery to Development Process

The FDP process should be viewed as starting from Discovery (refer to [Chapter 3](#) and [Section 1.2](#)), as choices made during the Appraisal phase have significant implications for subsequent project development decisions. This is especially true with regard to the unique role that data gathering plays in reducing uncertainty and which needs to be balanced with costs and initial views on commerciality.

The awarding of petroleum rights covers 1) an Exploration Period with relinquishment requirements and 2) the Production Period. The approval of an FDP is usually the basis for entering into the Production Period. The Discovery and Development process must therefore be consistent with the manner in which petroleum rights are awarded and acreage is relinquished.

### *Notification of Discovery*

- Is there a stipulated time period for informing the regulator of the discovery?

*This is typically immediate notification, followed by details provided within a specified number of days, including preliminary assessment on whether the discovery extends beyond the contract area.*

- Is there a requirement to furnish the regulator with copies of data, analysis and a technical assessment of the discovery? Is the timeframe for such reporting to the regulator clearly specified?
- Is there an obligation for the operator to furnish additional information related to the discovery as requested by the government?
- Is there a specified timeframe for the operator to notify the regulator whether the discovery is of potential commercial interest and hence requires appraisal?
- If the operator notifies the regulator that it will not appraise the discovery, is there a clear linkage with relinquishment requirements?

### *Appraisal*

- Is there a specified time period during which appraisal activities need to be completed? i.e. Is the duration of the Appraisal period clear?
- Is the process for extensions to the Appraisal period clear and transparent? Are the criteria, duration and conditions for extensions clearly established?
- Is there an obligation that an operator shall not commence appraisal activities without an approved Appraisal programme?
- Is there a requirement for the operator to submit a proposed Appraisal programme to the regulator for approval within a specified timeframe? Is it clear what the consequences are if the operator fails to submit in accordance with stipulated timeframe?
- Are the contents of an Appraisal programme clearly specified?
- Is there an obligation that operator shall not vary an approved Appraisal programme without prior written approval from the regulator?
- Is there a requirement to furnish the regulator with copies of samples, data and analysis?
- Is there a requirement to provide the regulator with an Appraisal report, setting forth all relevant technical and economic information in evaluating whether the discovery can be technically and commercially viable?

- Is there a specified timeframe for notifying the regulator whether the discovery is a commercial discovery? To be referred to as Declaration of Commercial Discovery.
- If the operator notifies the regulator that the discovery is not a commercial discovery, is there a clear linkage with relinquishment requirements?
- Is there an obligation for the operator to furnish additional information as requested?

#### *Field Development Plan (FDP)*

- Is there an obligation that petroleum operations must be performed in accordance with an approved FDP?
- Is there a specified timeframe after Declaration of Commercial Discovery that an FDP must be submitted to the regulator? Is it clear what the FDP submission timeframes and treatment is for natural gas? Is it clear what the consequences are if timelines are not adhered to?

*Due to the additional complexities associated with monetising natural gas, there are usually different timeframes, specific regulatory requirements and controls to promote effective development of such discoveries (not within the scope of this toolkit).*

- Is there a mechanism for ongoing engagement between the government and operator during the development of the FDP? Does it enable the government to be fully informed during the development of the proposed FDP?
  - Are there regular meetings at the petroleum agreement level to allow timely review of critical milestones e.g. joint management meetings
- Are the contents of an FDP clearly specified?

The government should provide detailed guidance to the operator on the contents of the proposed FDP. Many countries supplement the legal requirements with technical guidelines. See [Appendix A: FDP Submission Guidelines](#)

- Is an Environmental and Social Impact Assessment required as part of the FDP submission?
- Does the approval process provide for the use of independent specialists to support the government's review of the proposed FDP? Is it clear how this will be funded? Is it clear how independent advisers are treated for cost recovery and tax purposes?
- Is there a clear transparent process for the approval of the FDP?
  - Are there conditions and criteria that must be met for approval?

- Is there a specified timeframe for the government to inform the operator on its decision? Does this timeframe enable the government to conduct an independent review of the FDP?
  - Are there appropriate checks and balances on the decisions? For example, recommendations made by the regulator, approval by minister? Or cabinet or Parliament review?
- Is there a process established to resolve disputes on the FDP if they arise?

## (2) Ongoing FDP Monitoring and Compliance

- Are all future activities required to be consistent with the approved FDP? e.g. Are annual work programmes and budgets required to be in accordance with the FDP?
- Does any material deviation, or alteration to, an approved FDP require the regulator's prior written approval?
- Is the operator required to provide notification in writing of any material change, or anticipated material change, in an approved FDP?
- Is the form and content of a request to vary or amend the FDP clearly specified?
- Is there a clear transparent process for the approval of FDP?
- Are there conditions and criteria that must be met for approval?
  - Is there a specified timeframe for the government to inform the operator on its decision? Does this timeframe enable the government to conduct an independent review of the FDP?
  - Are there appropriate checks and balances on the decisions? For example, recommendations made by regulator, approval by minister. Or cabinet or Parliament review?
- Does the approval process provide for the use of independent specialists to support the government's review of the proposed variation? Is it clear how this will be funded? Is it clear how independent advisers are treated for cost recovery and tax purposes?

Please refer to the following tools related to the legal framework for FDPs:

- [Appendix C](#) for a legal checklist to aid in assessing the robustness of the existing FDP legal requirements.
- [Appendix D](#) contains illustrative model provisions that consider the above matters.