

Guyana Oil and Gas Event – What next?

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Background

- Purpose: To identify the state of our oil and gas sector, its significance, opportunities, defects and what can be done.
- The presentation does not address a number of major issues:
 - the absence of a comprehensive national policy on petroleum;
 - fossil fuel and climate change;
 - the implications of oil on the rest of the economy;
 - the resource curse; and
 - oil spills and the environment, all matters serious and significant enough to each warrant their own extensive presentation.
- Additionally, it will not address downstream operations such as a refinery, marketing, etc. and certain national issues i.e. Natural Resources Fund.

Topics for Discussion

- Importance of Oil – A new Guyana
- The Map – Corruption, Incompetence or both
- Revenue Impact – including imputed tax
- Brief History of Legislative Framework
- Brief of History of Esso
- The Petroleum Contract
- Provisions in the contract adverse to Guyana
- Taxation
- The Stability Clause and its challenge
- Addressing the Problem: lack of will; possible compromise of the major political players; lack of capacity; weak civil society
- Renegotiation/ Litigation/Abrogation
- Diaspora Involvement

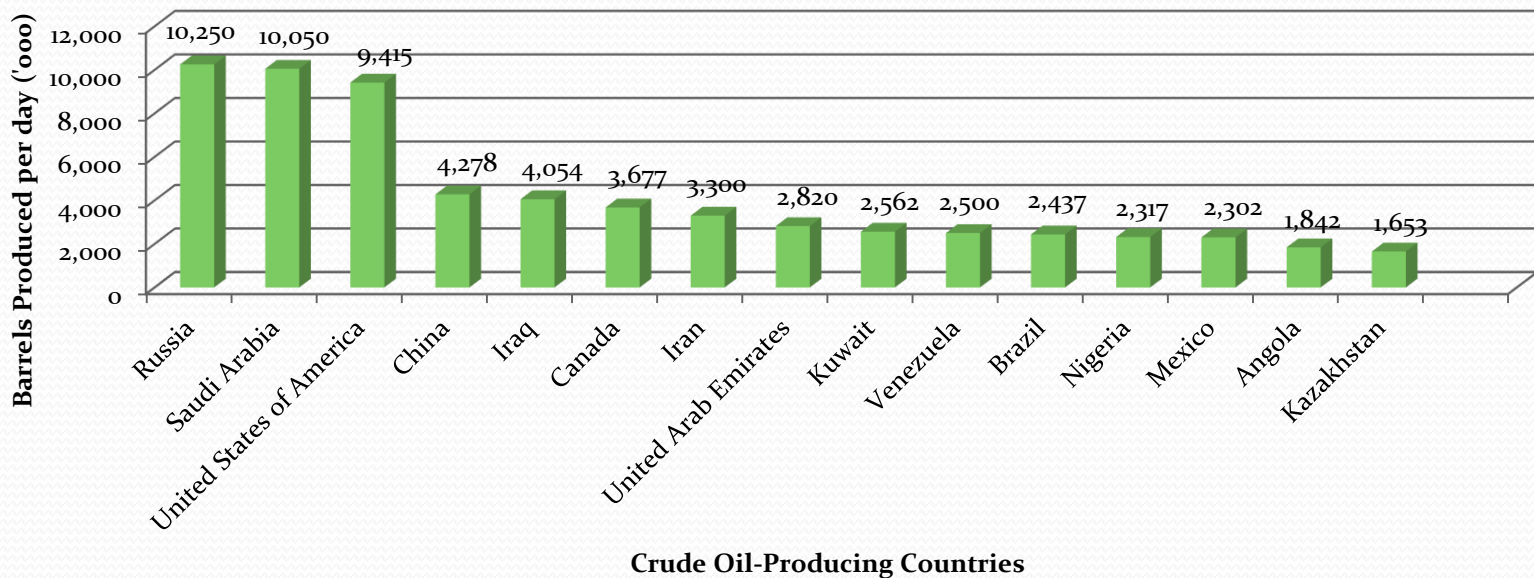
- Exxon-Mobil projects production of 120,000 barrels per day from its first well and growing rapidly thereafter to 750,000 barrels per day.
- Ranked by annual total oil revenue per capita Guyana will stand at number 1 among oil producing countries within the next decade.

Rank	Country	Annual total oil revenue per Capita
		in US\$
1	Guyana	17,700
2	Kuwait	11,536
3	Qatar	11,287
4	Norway	6,283
5	Saudi Arabia	5,682
6	United Arab Emirates	5,552
7	Brunei	4,980
8	Oman	4,060
9	Equatorial Guinea	3,641
10	Gabon	2,031
11	Iraq	1,989
12	Canada	1,849
13	Venezuela	1,445

World Production

- Crude oil production of the World is approximately 80 million bpd. In 2007 it was 73 million and in 2012 it was 76 million.
- The Chart below shows the current Top 15 ranked Oil Producers in terms of barrels per day.

**The Top 15 Crude Oil-Producing Countries of the World
based on Barrels Produced per Day ('000)**

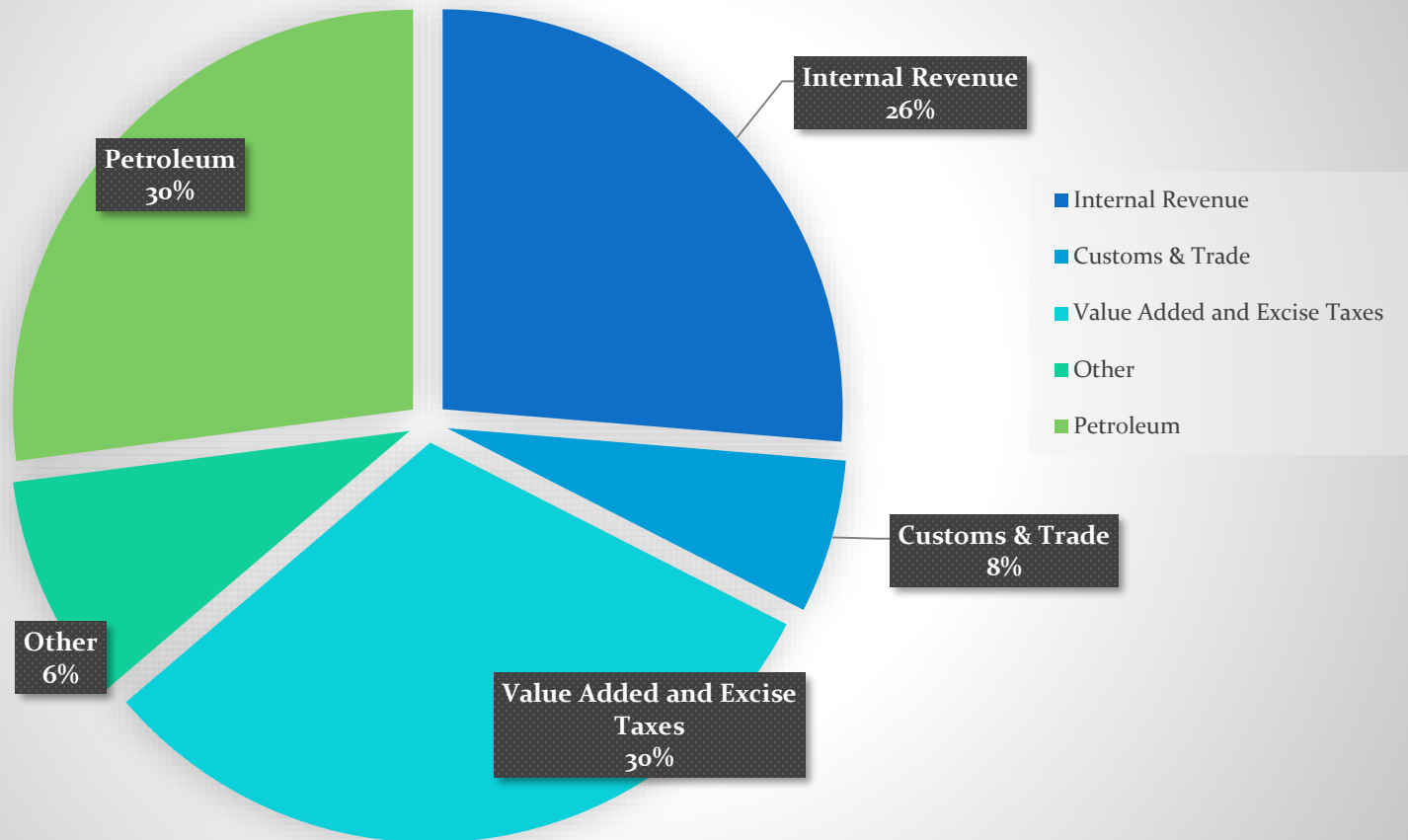


What being #1 means

- Still a small player – as a % of global reserves, Guyana's reserves is only 5500 million barrels, approx. 2% of Venezuela reserves.
- Nature of economy and society to change dramatically
- Total value of oil production by Exxon and its partners will exceed US\$360 Billion over the life of the petroleum agreement
- Huge opportunities and challenges

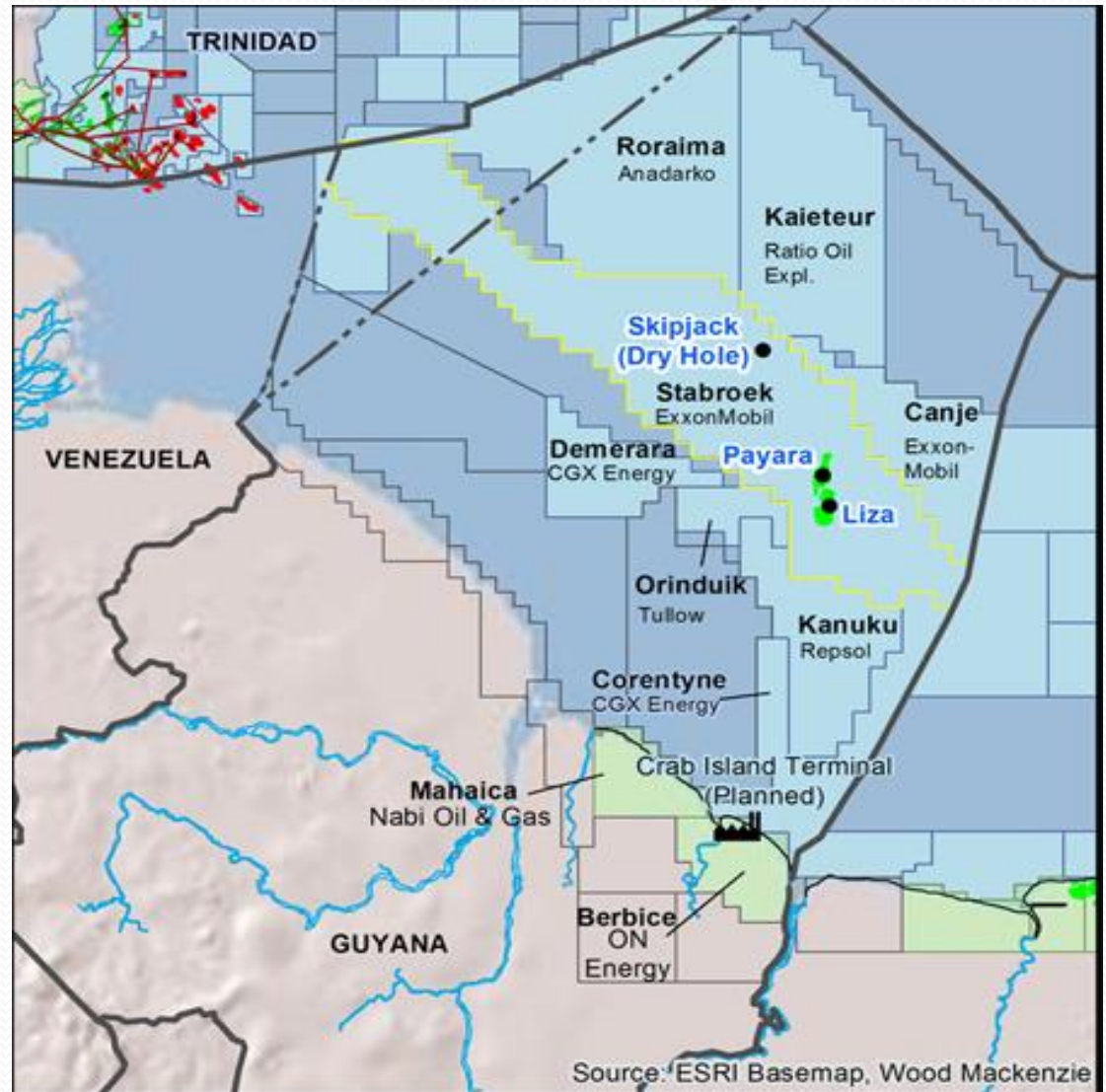
Budgeted Current Revenue for 2019 – illustrative impact of Petroleum

Total Current Revenue – GY\$255,007 Mn



Map showing the distribution of blocks

- Total offshore blocks awarded 8,131,000 hectares
- Stabroek Block totals 2,700,000 hectares (33%)
- Blocks where ExxonMobil is the operator totals 4,671,000 hectares (54.8%)
- ExxonMobil total ownership 1,904,850 (22.3%)



Licence Holders in Guyana

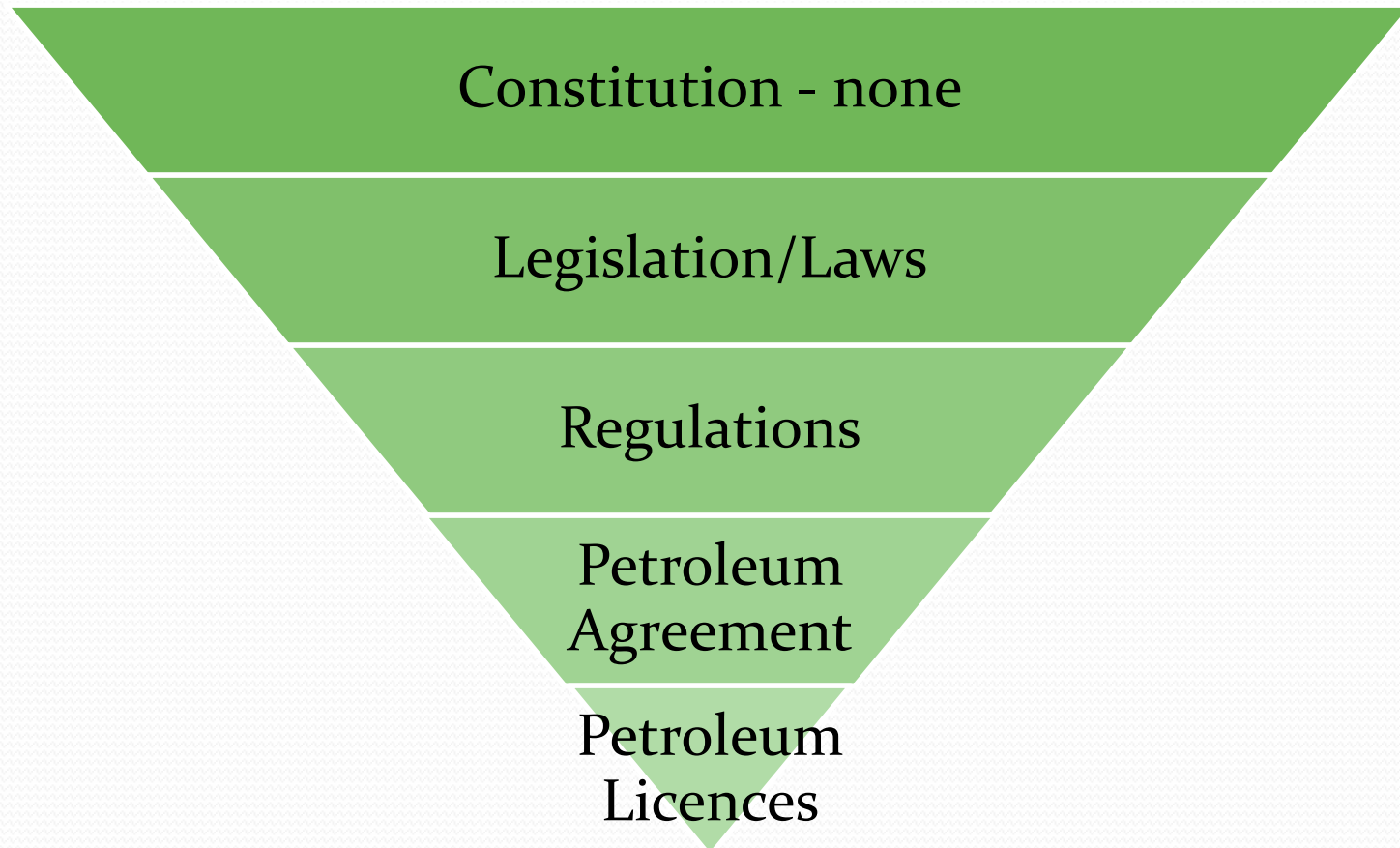
Location	Block	Estimated Hectares	Licencee	Joint Venture Partner
Inland	Takutu Basin	1,000,000	Nil	Nil
Coastal	Mahaicony	260,000	Nabi Oil & Gas Inc.	Nil
	Berbice	333,000	ON Energy	Nil
Shelf	Kanuku	660,000	Repsol	Tullow
	Corentyne	630,000	CGX Resources Inc.	Nil
	Orinduik	180,000	Tullow	Eco Atlantic Oil and Gas
Deepwater	Canje	611,000	Mid Atlantic Guyana Inc.	Esso & JHI Associates
	Stabroek	2,700,000	Esso	CNOOC Nexen and Hess
Ultra Deepwater	Roraima	1,990,000	Anadarko	Nil
	Kaieteur	1,360,000	Ratio Energy Inc / Ratio Guyana Inc	Esso

Source: Guyana Geology and Mines Commission

Legal and Regulatory Framework

Petroleum Regime

The regime regulates transactions between the political entity and the legal entities involved, meaning the government and the oil company or companies.



Petroleum Agreement

- The Act
- The History of Exxon Mobil
- The Contract
- Defects

Timeline of Legislation

- 1938 • First prospecting licence issued. (Presumably under the British (Mineral Oil) Regulations of 1912.)
- 1939 • The Petroleum Production Act (1939) Cap. 65:05 was established.
- 1940 • Petroleum (Prospecting and Winning) Regulations # 8 of 1940.
- 1967 • Petroleum (Prospecting and Winning) Regulations # 5 of 1967 similar to 8 of 1940 but reflecting country's Independence status.
- 1986 • The Petroleum Exploration and Production Act Cap. 65:04 (# 3 of 1986) enacted, repealing the 1939 Act but for one substantive section – vesting the property in petroleum in the State. PEPA Regulations No. 5 of 1986 made, replacing the 1940/1967 Regulations.
- 1992 • Amendment to section 51 of PEPA restricting the modification of tax laws to production sharing agreements. Note that the amendment also saved all orders previously issued under the section.
- 1997 • Amendment to section 4 of PEPA increasing the penalty for breach of prohibition on unauthorised disclosure of information.

1986 Act

- Minister given power to enter into agreement.
- Key statutory positions:
 - Minister & inspector
- Prospecting licence
- Discovery of petroleum (Section 30)
- Appraisal licence
- Petroleum production licence

Prospecting and Production Licences

The PEPA and Regulations set out detailed rules for the application and grant of prospecting and production licences.

- For purposes of licensing and exploring for petroleum products, the country is divided into blocks, a process which begins with the preparation of a reference map of the geographical area of Guyana.
- Applicant must show financial status, technical competence and experience in petroleum exploration and production.
- Minister may attach conditions to a licence.
- Prospecting licence – Maximum # of blocks restricted to sixty (60), unless the Minister is satisfied that special circumstances exist for granting a higher number; four years in first instance and two renewals of three years each. 50% of blocks then held to be relinquished at each renewal.
- Production licence for 20 years subject to one renewal of ten years.

Prospecting and Production Licences

- The award of licences must to be published in the Gazette.
- Licence may be revoked if licensee fails to act on notice by Minister of intention to terminate on grounds of non-compliance with conditions of licence.

Regulations

Local Content Requirement

Prospecting Licence

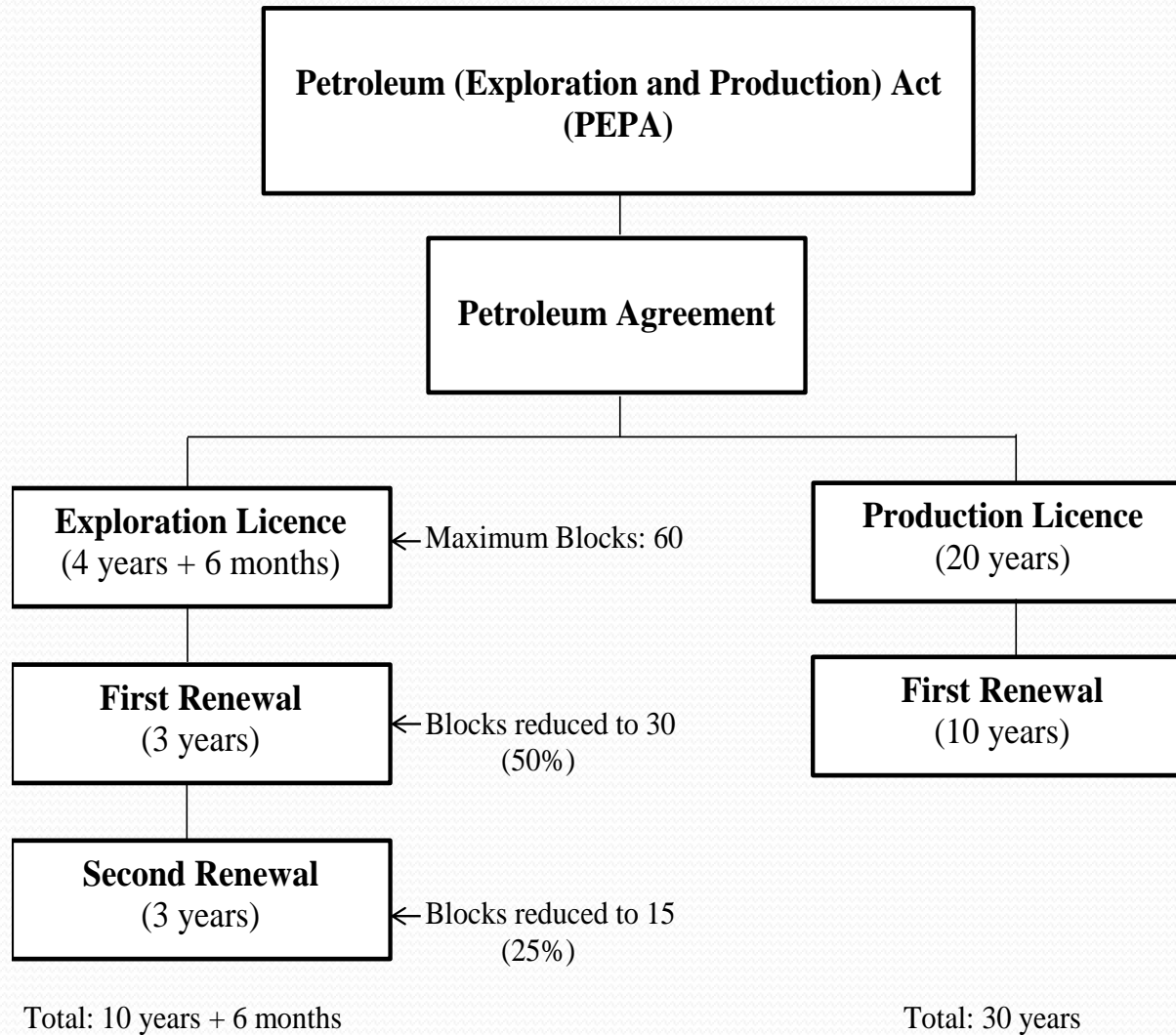
- A statement giving particulars of the applicant's proposals with respect to the employment and training of citizens of Guyana.

Production Licence

- A statement giving particulars of the applicant's proposals with respect to the employment and training of citizens of Guyana.
- The applicant's proposal in relation to goods and services to be obtained in Guyana.

Section 36 (1) (iv) of the Act prohibits the Minister from granting such licence unless the proposals for the employment and training of citizens of Guyana, and for the procurement of goods and services obtainable within Guyana are satisfactory.

Duration of Licences



Maximum Period: 40 Years + 6 months

ExxonMobil's Relationship with Guyana

ExxonMobil's Relationship with Guyana

- 1999,
June 14
 - Petroleum Agreement and Prospecting Licence signed by President Janet Jagan as responsible Minister for approximately 600 blocks.
- 2000,
Sept.29
 - Company declares *force majeure* due to hostile action by Surinamese naval vessels against the CGX oil rig and drill ship C.E. Thornton.
- 2007
Sept. 7
 - UN pronounces on Guyana/Suriname dispute.
- 2008
Oct.
 - *Force majeure* status lifted following UN pronouncement.
- 2008
Oct. 30
 - An Addendum and Extension Deed to the Petroleum Prospecting License signed, modifying the Contract Area, the relinquishment obligation and the initial period.

ExxonMobil's Relationship with Guyana

- 2016
Aug. 2
- Official Gazette reveals that a new agreement was signed between Guyana and Exxon and its JV partners on 27 June 2016. That document has not been released to the public or the National Assembly.

ExxonMobil controls directly or indirectly more than 50% of the licensed areas.

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ExxonMobil's Relationship with Guyana

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Dec

2016 Petroleum Agreement

2016 Agreement

Nature	Production sharing
Parties	Esso Exploration and Production Guyana Limited (45%) (Bahamas); CNOOC Nexen Petroleum Guyana Ltd (25%) (Barbados); and Hess Guyana Exploration Ltd (30%) (Cayman Islands)
Government take	Royalty (2%); profit share (50%) with cost oil limited to (75%); tax (0%); annual licence (US\$1Mn); signature bonus (US\$18Mn)

2016 Agreement (continued)

Total area	2,700,000 hectares
Insurance	Allowed to self-insure with Minister's permission
Bond	Affiliated Company guarantees could be used in place
Stability clause	Government not exempt company from any changes in laws, etc. which have an adverse effect.
Gas	Contractor to give notice whether development plan includes plan to develop and utilise excess Associated gas; Government to elect to take excess Associated gas

Critique

Problem with Petroleum Agreement

- Approval by National Assembly not required
- Number of Blocks
- Weak audit framework
- Self insurance permitted
- Potential for transfer pricing
- Non compliance with local content requirement
- Poor environmental safeguard
- Taxation clause
- Low or no oversight
- Ineffective ring fencing
- Associated and unassociated oil and gas
- Incompetence
- Potential for corruption

Share of Oil

Projected share of revenue under 2016 Petroleum Agreement signed between Government of Guyana and Esso Exploration and Production Guyana Limited, Hess Guyana Exploration Limited and CNOOC NEXEN Petroleum Guyana Limited, all registered under the Companies Act of Guyana but incorporated in the Bahamas, Cayman Islands and Barbados respectively.

Oil price US\$	50.00	60.00	70.00	80.00
Projected Cost oil including royalty	<u>36.00</u>	<u>36.00</u>	<u>36.00</u>	<u>36.00</u>
Profit	<u>14.00</u>	<u>24.00</u>	<u>34.00</u>	<u>44.00</u>
Share of Profit				
Government (50%)	7.00	12.00	17.00	22.00
Exxon (50%)	7.00	12.00	17.00	22.00
Royalty (2%)	1.00	1.20	1.40	1.60
Total take				
Government	8.00	13.20	18.40	23.60
As a percentage	<u>47.3%</u>	<u>46.3%</u>	<u>45.9%</u>	<u>45.7%</u>
Exxon and Partners	7.00	12.00	17.00	22.00
Deemed tax	1.93	3.30	4.68	6.05
Total	<u>8.93</u>	<u>15.30</u>	<u>21.68</u>	<u>28.05</u>
As a percentage	<u>52.7%</u>	<u>53.7%</u>	<u>54.1%</u>	<u>54.3%</u>
Cap on cost oil ¹	37.50	45.00	52.50	60.00

Prepared by Christopher Ram, Chartered Accountant and Attorney-at-Law
5 April 2018

¹ The Contract provides for Cost Oil to be Limited to 75% of revenue in any year

Challenging the Stability Clause

Stability Clauses Are An Affront To Justice and the Rule of Law

- The Minister acted *ultra vires* the Act by binding the country and inhibiting the country's ability to properly govern in future. ***The Movement for Quality Government in Israel v Prime Minister HCJ 4374/15 27 March 2016***
- **Clause 32 is *ultra vires*, unconstitutional, undemocratic and is contrary to Article 65(1) of the Constitution of Guyana by purporting to bind subsequent Parliaments under Clause 32.4 of the 2016 Agreement. *Niger Delta Development Commission v Nigerian Liquefied Natural Gas Company Limited, Suit Number FHC/PH/CS/313/2005, unreported Judgment, 11 July 2007***

Stability Clauses Are An Affront To Justice and the Rule of Law (Cont'd)

- The provision for self-insurance is ultra vires the Act, making Guyana one of the first countries to permit an oil company to self-insure in modern governance.
- The grant of additional bocks of petroleum by the Minister is unjustified, and improper disclosure on the part of the Government and Exxon Mobil raises questions of accountability and integrity at this early phase of the oil and gas cycle.
- The payment by the State of taxes payable for the oil companies is discriminatory.
- The contract was made under duress.
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The Case for Renegotiation

- The case for renegotiation has been considered by the competent courts and demonstrates that an order of court can allow defective petroleum agreements to be reviewable, modified and renegotiated as held in:
- - *Associated British Ports v Tata Steel UK Ltd [2017] EWHC 694 (Ch)* considered whether to declare unenforceable a price review provision as an ‘agreement to agree’.
- - *Ampal-American Israel Corp. et al v Arab Republic of Egypt (ICSID Case No. ARB/12/11)* gave insight into the operations of the termination provisions in a gas sales agreement for non-payment.

Role of Diaspora

Profit and Service

PROFIT

- Investment opportunities
 - direct and indirect, financial services, engaging in agriculture
- Job opportunities
- Health & other social services
 - construction, housing, roads etc
- Refining & other downstream petroleum production activities

Profit and Service

SERVICE

- Professional & Technical analyses
- Advocacy activities
- Legal intervention
- Assisting NGOs with common interest



End of Presentation

Thank you